

ALASKA STATE LEGISLATURE  
LEGISLATIVE COUNCIL  
DECEMBER 19, 2015  
9:00 AM  
*Approved August 3, 2016*

**MEMBERS PRESENT**

Senator Gary Stevens, Chair  
Representative Bob Herron, Vice Chair  
Senator Lyman Hoffman  
Senator Charlie Huggins  
Senator Kevin Meyer  
Senator Peter Micciche  
Representative Mike Chenault  
Representative Craig Johnson  
Representative Sam Kito  
Representative Charisse Millett

**MEMBERS ON TELECONFERENCE**

Senator John Coghill  
Senator Anna MacKinnon  
Representative Mark Neuman

**MEMBERS ABSENT**

Senator Lesil McGuire, alternate member  
Representative Mike Hawker  
Representative Steve Thompson, alternate member

**OTHER LEGISLATORS PRESENT OR ON TELECONFERENCE**

Senator Costello; Representatives Drummond, Guttenberg,  
LeDoux, Lynn, Stutes, Tarr, Tuck, and Vazquez

**AGENDA**

ANCHORAGE LIO - EXECUTIVE SESSION IF NEEDED

**SPEAKER REGISTER**

Pam Varni, Executive Director, Legislative Affairs Agency  
Doug Gardner, Legal Services Director, LAA  
Tanci Mintz, State Leasing & Facilities Manager, Div. of  
General Services, Dept. of Administration  
Mark Pfeffer, Real Estate Developer, Pfeffer Development,  
LLC, and co-owner of 716 W Fourth Avenue, LLC  
(SPEAKER REGISTER CONTINUES ON NEXT PAGE)

**SPEAKER REGISTER CONTINUED**

Peter Shorett, Exec. Vice President, Kidder Matthews Real  
Estate Appraisal  
Serena Carlsen, Partner, Stoel Rives, LLC  
Deven Mitchell, Debt Manager for the State of Alaska and  
Executive Director for the Alaska Municipal Bond Bank  
Mark Davis, Chief Infrastructure Officer for the Alaska  
Industrial Development Export Authority (AIDEA)  
Representative Bob Lynn, District 26  
Representative Louise Stutes, District 32  
Representative Liz Vazquez, District 22

9:04:08 AM

I. **CHAIR GARY STEVENS** called the Legislative Council meeting to order at 9:08 a.m. in the Anchorage Legislative Information Office Auditorium. Present at the call were Senators Stevens, Meyer, Hoffman, Huggins, and Micciche; Representatives Herron, Chenault, Johnson, Kito, and Millett. Participating via teleconference were Senators Coghill and MacKinnon, and Representative Neuman. Absent were Senator McGuire, alternate member; and Representatives Hawker and Thompson, alternate member.

II. **ANCHORAGE LIO**

CHAIR STEVENS reminded members that this was a follow-up meeting to the December 4, 2015, meeting. The goal today was to provide the committee with an update on the analysis of the Anchorage office space options as was requested. He asked that members keep in mind as they go forward the obvious fiscal problems in the state, which have been discussed in both the House and the Senate; the governor's budget has indicated a reduction last year of some nine percent, a reduction this year of two percent plus in this year's plan, as well as an income tax and use of the permanent fund; so we all know we're facing some pretty serious problems here. He said he knows the Senate is looking at additional reductions from the governor's suggested budget cuts.

Chair Stevens said that in this morning's paper there was an article about this issue and about two representatives who commented on their thoughts. There has been a consistent mistake made when we see it in the paper talking about "breaking the lease." He said that, if we do move, that we wouldn't be breaking the lease, but rather taking advantage of a negotiated clause in the lease that went through a lot of discussion as two sides negotiated a contract. He said further that members should remember that what may be done here today is advisory to the Legislature; Council doesn't have the power of funding anything and we have to make a recommendation, hopefully, one way or the other, to the entire Legislature to include whatever decision is made in the budget.

He said he also wanted to make notice of the letter sent to the Council by Senator Wielechowski and Representative Tuck. He said that what they are talking about is a concern about moving to the Atwood Building; they suggest having individual offices around Anchorage someplace within an

individual Legislator's district. That is something that can certainly be accommodated and, should it happen that we go to the Atwood, we can reduce the space that we are leasing there quite readily. He said his response to the letter is that can be taken into consideration and Legislative Council can establish smaller offices around Anchorage, for example, should they choose to.

Chair Stevens said in closing that to all Legislators in the room, he was pleased to have them here. They will be recognized and may ask any questions they want; please respond and let us know your thoughts - not only the members of Council, but any Legislators that are here. Having said that, Chair Stevens asked Pam Varni and Doug Gardner to the table to give an overview of what happened at the last meeting. He said also available on teleconference are Serena Carlsen, our attorney with Stoel Rives, LLC, and Peter Shorett from Kidder Matthews, to present the various options they have as well, talking about the discount rate and the inflation analysis.

Chair Stevens said, in response to a request by Representative Millett, that Council hear from the owner of the building, Mr. Pfeffer, that if he was willing to speak, they would find the time for him.

PAM VARNI, Executive Director of Legislative Affairs Agency, put herself on the record and noted that also with her at the table was Doug Gardner, Legal Services Director, and on teleconference was Chuck Burnham, Research Manager. She said the Agency worked on coming up with some scenarios that looked at annual cash outlays over a ten year period, from 2016-2025. We went over those scenarios last time, and for the benefit of the members that were not at the last meeting and others in the audience, she said she would briefly go over those. She noted that these scenarios do not look at inflation and do not look at net present value. Peter Shorett and Serena Carlsen will speak to that after she, Doug, and Chuck go through the five scenarios.

Ms. Varni said the first scenario was to continue the current lease at 716 W 4th Avenue. Looking at a 10 year period, the total cost is \$40,320,000; total monthly cost per usable square foot is \$7.41. The Legislature would need to fully fund the lease through the Legislature State Facilities Rent component every year for the remainder of the original 10 year lease, which expires on May 31, 2024. The cost per square foot are based on usable space of 45,371 and a total of 86 parking spots.



In response to a question by Representative Millett, Ms. Varni said the lease is based on a gross figure of 64,000 square feet and all of the other legislative leases throughout the state and also in the Executive Branch are based on usable and not on gross. Usable does not include bathrooms, the vertical penetrations, and some of the common floor areas. The square footage was double-checked by RIM Architects and asked Peter Shorett to confirm her definition of usable space.

PETER SHORETT, Exec. Vice President, Kidder Matthews Real Estate Appraisal, said that Ms. Varni had described it accurately. He said that the usable areas are those that are occupied by the Legislators or for their conference uses. It does not include the lobbies, hallways, corridors, and vertical penetrations.

REPRESENTATIVE MILLETT asked if the Auditorium and the conference rooms across the hall, as well as the conference rooms on each of the floors, would be considered usable space.

MS. VARNI AND MR. SHORETT both confirmed that they would be.

MS. VARNI continued with Scenario #2: Purchase 716 W 4th Avenue Funded by AHFC Issuing Fixed Rate Bonds. She said the total after a 10 year period is \$48,850,000; total monthly cost per usable square foot is \$8.97. The Legislature would need to pass a stand-alone bill to enable AHFC to finance the purchase of the building. This scenario shows a 10 year maturity at a fixed rate at approximately 2.16 percent.

However, Ms. Varni said that last night, Friday, December 19, 2015, Senator Stevens and Representative Herron, along with herself and Doug Gardner, met with Mark Pfeffer. She told Council members that he had agreed to come down on his price from \$37,000,000 to \$36,000,000. The new offer still includes the \$950,000 cost for the loan pre-payment fee for his \$28,000,000 loan. Due to the late hour of the meeting, she was not able to create new scenarios, but that under Scenario #2, with the new purchase price, the total after a 10 year period is now \$45,701,840.

In response to a question from Speaker Chenault, Ms. Varni said the meeting between building owner Mark Pfeffer,

Senator Stevens, Representative Herron, Doug Gardner and herself took place at 4:30pm.

CHAIR STEVENS commented that he was in his Senate Caucus meeting and received a call from Doug Gardner saying that the owner would like to meet. He said we did meet with him briefly for about 30 minutes. He wanted to make sure that Mr. Pfeffer knew that while he knew about the non-appropriation clause, the Chair was in no way meeting with him to try to get him to lower his price, but that if Mr. Pfeffer had a different offer he wanted to make, the Chair was certainly glad to listen to him.

MS. VARNI moved to Scenario #3: Purchase 716 W 4th Avenue via Issuance of Variable Rate Certificates of Participation. The total for this scenario after a 10 year period would be \$42,948,659; total monthly cost per usable square foot would be \$8.19. The Legislature would need to pass a stand-alone bill outlining the project, cost, annual payment and total payments. There being no questions, Ms. Varni moved on to the next scenario.

Scenario #4: Purchase 716 W 4th Avenue through the Capital Budget. The total after a 10 year period would be \$41,750,000; total monthly cost per usable square foot would be \$7.93. The Legislature would own an asset and be responsible for all ongoing maintenance and operating costs of the building. The Legislature would not be reimbursing the landlord for property taxes or insurance once the Legislature owns the building. A building manager position was factored into this scenario. There being no questions, Ms. Varni moved on to the next scenario.

Scenario #5: Move to State-Owned Space at the Atwood Building. The action required would be a non-appropriation of the lease with 716 W 4th Avenue and to enter into a State lease with the Department of Administration for the Atwood Building. She said the Legislature would be charged for 84 parking spots based on the square footage of the proposed lease space. Actual parking would include 80 underground parking spots reserved for Legislators on a first-come, first-served basis; and an additional 266 spots available on a first-come, first-served basis located in Blocks 102 and 79. The total cost for a 10 year period would be \$6,647,760; total monthly cost per usable square foot of \$1.85. In addition, there would be tenant improvement costs for the Atwood Building of \$3,500,000.

SENATOR MICCICHE, noting the state fiscal gap and the \$7,500,000 in tenant improvements already invested in the current space, asked what was the bare minimum to spend in tenant improvement costs, even at a certain level of discomfort, to move into the Atwood Building.

MS. VARNI, after confirming that Senator Micciche was asking if the tenant improvements could be done for less than \$3.5 million, said that they would have to work with Tanci Mintz, and her architects and staff to see if that was possible. For instance, on the 19th floor, there was possible space for leadership offices with existing office walls and beautiful wood trim that could potentially work as-is. Some of the space needs new carpet for sure, but there is some room to save some money.

CHAIR STEVENS added that a lot of it is offices on the perimeter of the floor with cubicles in the center, which would not be adequate for Legislators who would need more privacy to talk to constituents. He said there wasn't really a way to just move in and make it work without some changes.

REPRESENTATIVE MILLETT said it was her understanding that Mark Davis from AIDEA was present and Deven Mitchell from the bond bank on teleconference with some other options and asked if Council would be hearing from them. She asked if there were any documents with regard to those options.

DISCUSSION FOLLOWED to confirm that there were documents available and the request was approved to hand them out to Council prior to the presentation.

SENATOR MACKINNON asked about parking at the Atwood Building. She said Legislators are in and out of meetings in the downtown area on a regular basis and asked if there were any parking spaces that would be dedicated to Legislator parking. She wanted to know if the State could accommodate some spots designated specifically for Legislators.

MS. VARNI noted that the Linny Pacillo parking facility has 838 parking spots, also Legislators and Directors and Commissioners in the Executive Branch have 80 underground parking spots at the Atwood Building. In addition, there are surface parking lots at Blocks 102 and 79 where there are 266 spots. She said it would likely be the same practice that is currently followed at 716 W 4th Avenue, where there wasn't a spot reserved for a Legislator but

there were enough open spots to accommodate parking. She said when she went through the underground parking facility recently, there were at least 25 vacant spots and she didn't think there would be a problem with parking. In response to a follow-up question by Senator MacKinnon, Tanci Mintz was asked to come forward.

TANCI MINTZ, State Leasing Facilities Manager for the Department of Administration, said that the State had not been planning to do reserved spaces for Legislators as it's not very often everyone is there at the same time and they want to try and maximize the use of the space. As Ms. Varni had said, there were plenty of spaces for everyone to park, whether it be in the Linny Pacillo Parking Garage directly across the street or in the Atwood Building underground garage.

SENATOR MACKINNON expressed her concern that there be a few spots dedicated for use by Legislators and asked that her concern be considered.

CHAIR STEVENS invited Mark Pfeffer to address Council at the request of Representative Millett, who had questions for Mr. Pfeffer who said he had not planned to be at the meeting but was asked to do so.

REPRESENTATIVE MILLETT asked Mr. Pfeffer to walk Council through how we got here. She said she was new to Legislative Council and this building had preceded her. She said she understood that at one point that we were in negotiation to purchase the building when we started doing building improvements. She said it would be helpful to walk through that history.

MARK PFEFFER said that the Legislature had occupied this building for a little over 22 years; first under an original procurement in 1992 or 93 and then a follow-on procurement in 2003 and 2004. The last procurement was for a five year lease with five one-year options to renew. He said he was not an owner of the property through all of that but was asked for help in trying to find a path forward for the Legislature by the building owner Bob Acree and he eventually became a partner with Mr. Acree in the building. Through the first five years and the five one-year options, the Legislature issued numerous RFIs (Requests for Information) that were all published in the newspapers, so like everybody else, he said he watched what was going on. There were several attempts at government-to-government procurements, there were a couple attempts to

buy buildings and renovate them. Eventually, in May 2013, the Legislature was down to one year left on the lease and after 12 procurement attempts with no resulting awardable contract, Representative Hawker, who was Chair of Legislative Council at the time, approached the building owners and asked if we could provide a proposal for how to extend the lease.

Mr. Pfeffer said that in May 2013 they gave three proposals: one was carpet and paint, with the lease rate remaining the same; the second was carpet, paint, re-do bathrooms, put in new elevator and some mechanical upgrades and the lease rate would moderately tick up; the third choice was a full modernization. At that time, the Council didn't take any action but rather said the Legislature should go out for an RFI one more time before they figured out what they wanted to do. The RFI did go out and they got two responses. In June 2013, the Council met and apparently they had considered those two options and rejected them. At that point, they passed a series of resolutions authorizing Representative Hawker to negotiate an extension of the lease based on the full modernization approach.

REPRESENTATIVE MILLETT interrupted to ask if it was a unanimous vote to go ahead with that authorization. It was confirmed that it was a unanimous vote.

MR. PFEFFER added that there were five motions needed to make it happen. One of those motions was to obtain AHFC (Alaska Housing Finance Corporation) as the Legislature's representative in the discussions. He said that AHFC had represented the Legislature in discussions when it attempted to put together a project on Block 39 with the Court System a few years earlier, so AHFC had some background with the subject and they had the expertise on staff. Those motions passed and technically at that time Representative Hawker was authorized to execute a lease amendment; that's not what he did. He said Representative Hawker then, along with his staff, had the owners, Legislative Affairs staff and AHFC staff and AHFC's third party consultants spend about 11 weeks meeting weekly to go over the details of what the scope should be - how many rooms, how many offices, how many conference rooms, what kinds of finishes, elevators, security, telecommunications, servers, all the details. He said that by the time that 11 weeks was up it was late August 2013 and by that time, the scope had been put out to bid and the numbers were back, AHFC had back-checked those numbers and Representative Hawker brought that to the Council and presented all of

that information. The Council didn't take specific action because it had already authorized Representative Hawker to execute the lease, so it was a presentation to see if there was any objection to moving forward. Mr. Pfeffer said at that time there was no objection but there was a motion to request that Representative Hawker attempt to negotiate a purchase option with the owners. After that Legislative Council vote in August 2013, it took several weeks to kind of button up the details of the lease extension and amendment. There were two key exhibits to that lease: one was a finding of the procurement officer that all of the statutes had been met and that was Exhibit C to the lease. Exhibit D to the lease was a certification by the Executive Director that the lease had been reviewed by an appraiser and the lease amount was at least 10% below market rate for a comparable product here in downtown Anchorage. He said based on that certification and the signed lease, there was then a document that was executable, which was then executed and with that they were able to secure construction financing and advance the project.

Mr. Pfeffer said a purchase option was negotiated then and that went to Legislative Council in 2014 during the last legislative session. He said on their side, they wanted to defer the income taxes that they would have to deal with if there was a sale, so they suggested that the Council buy the building for the debt amount, which was \$28,000,000 and then the \$9,000,000 they had in equity would be in the form of a ground lease. The Council didn't like the idea of a ground lease, so did not take action on that signed agreement. In response to a question by Representative Millett, Mr. Pfeffer confirmed that a "ground lease" meant they would still own the land and the Legislature would lease the land. He continued that the Legislature would buy the building and there would be a fixed price option to buy the land at a future date.

SPEAKER CHENAULT asked if what Mr. Pfeffer meant was that in 2014 at a Legislative Council meeting, a proposal was put together that Legislative Council could have bought the building for the cost of the renovations, which was \$28,000,000; and then the owners wanted to lease the land for tax purposes back to the State for approximately 10 years and then the Legislature could have bought the land at fair market value.

MR. PFEFFER said that the way the numbers really worked was that the total project cost was \$44.5 million, the Legislature put in \$7.5 million, which left \$37 million of

cost and they had \$9 million of cash that they put into it and they borrowed \$28 million. He said that's the reason that, today, they've said they'll sell it at their cost, which is \$37 million with the land. He said last year there was no action taken by Council but there was a lot of concern about buying the building without buying the land. Now, given the fiscal reality, we recognize that's important to the Legislative Council so they've agreed that they would sell the building and the land. He said they've asked to sell the building at their cost, which is \$37 million. He said there is a prepayment penalty because they are now on their long-term loan; last year, they were on their construction loan and there would have been no prepayment amount if the sale had occurred last year.

SENATE PRESIDENT MEYER thanked Mr. Pfeffer for the history because during that time period, he served off and on Legislative Council. He said that there used to be a bar here, Anchor Pub, and they were pretty anxious to get that out of the way, there'd been some problems.

MR. PFEFFER confirmed that was so and said there was literally blood on the street. He confirmed that the Auditorium used to be the Anchor Pub.

SENATE PRESIDENT MEYER said he had advocated for leasing instead of buying because his friend Charles Wohlforth and Senator MacKinnon were all on the Anchorage Assembly back in the 1990s when the State bought the Atwood Building and took that off the tax rolls, which essentially then raises the property taxes for the rest of the folks in Anchorage. He said he was not a fan of buying this building and taking it off the tax rolls. Also, he said he thought it was in the Anchorage 2020 Plan that government buildings stay downtown, so we were limited on where we could go. That's why the Courthouse, the Federal Building, the Atwood Building, City Hall, all government buildings are downtown. He said there was not much space available and some wanted to lease versus buy. Others he remembered said that if the Legislature was going to stay at this location, let's make it big enough that if a special session occurred, which happened just last year, it could be held here. He said the history of this and how it's evolved is very complex and he doesn't think it's ever been fully described, so he appreciated Mr. Pfeffer enlightening Council and the rest of the folks here. He said he appreciated everything Mr. Pfeffer has done to try to work with the Legislature and we're not an easy group to work with because we all have different opinions as you're hearing. He said he's not sure

what's going to happen here, but he wanted to thank Mr. Pfeffer for his time and patience in working with Legislative Council over all these years.

REPRESENTATIVE JOHNSON said he wanted to clarify the addendums to the lease. He said there was one where Legislative Council and the Agency, the LAA staff, got an independent appraisal that it was 10% below market value, and that was an addendum to the lease, correct?

MR. PFEFFER confirmed that was so, and went on to further explain that it was an independent appraisal that was ordered by AHFC. Under the statute under which the lease extension was done, a lease can be extended if the lease rate is at least 10% below market value. In the case of that appraisal, the question was is there 64,000 square feet downtown with parking dedicated on site. He said he believed if Council reviews that appraisal, what they'd see is that in order to accomplish that, the market comparable would have to be created. The appraisal analyzed what it would cost to do that and then it analyzed what it would cost to renovate the existing building and the difference was 13% lower to renovate. The appraisal itself was not attached to the lease, he didn't believe, but there was a certification signed by the LAA Executive Director referring to the appraisal saying that it had been reviewed, it had been back-checked and it had been certified that the lease rate was 13% below market value. In response to a follow-up question by Representative Johnson, Mr. Pfeffer said that was from AHFC and the Legislature. Mr. Pfeffer added that the owners didn't actually know what that appraisal was going to say until after they had laid out their total costs after putting the project out to bid, developed the lease rate and presented that to Legislative Council; subsequent to that, the appraisal came in, so they weren't targeting a number based on the appraisal.

SENATOR HOFFMAN asked about the provision that the Chairman talked about, a clause or an option in the lease that says that the Legislature can terminate the lease by not funding it. He asked Mr. Pfeffer to describe how that clause got in the lease and Mr. Pfeffer's interpretation of that clause.

MR. PFEFFER said that every government lease - city, state, federal - in every state has a subject to annual appropriation clause. He said he would encourage Legislative Council to talk to the investment banking community and the commercial banking community to get their



take on the importance and significance of that clause. It is a rarely, if ever, used clause because once it's used that subsequent leases have to be looked at as though they are basically only a one year lease. So, one would have to pay the full cost of whatever it is one's leasing basically in one year because the lessor cannot count on a longer term payment schedule. He said there was probably 200-300 leases around the state that are current that have that clause in it. Landlords and banks and investors invest in projects for government knowing that the clause is there but also knowing that it's virtually never used and if it is used, it's going to have a significant effect on the way one is able to do things in the future. He said he knew there was a letter out from the Alaska Bankers Association and he encouraged members to look at that carefully. He did not request that the letter be written, he said he just knew that last year when the Senate didn't appropriate the lease payments, the bankers were pretty concerned and got a letter out to Legislative Budget and Audit, and he knows there have been a few other letters from the investment banking community since then. The clause exists but it is a tricky credit issue to use that clause.

REPRESENTATIVE KITO said he understood that the clause has been used and he didn't know of detrimental impacts to the ability to enter into leases, so he said he didn't see that as being a challenge here.

CHAIR STEVENS said that he believed Ms. Mintz said the Administration has used it two or three times and, of course, the Legislative Council used it once in Juneau as well.

SENATOR MICCICHE thanked Mr. Pfeffer for being here and for all he'd put up with throughout this deal. He said people like to shoot arrows at folks for various reasons; we can't always identify what's in their hearts or in their minds. He asked if Mr. Pfeffer could list other projects he's done with municipalities and state government so Council understands he has a background in this kind of business.

MR. PFEFFER said he facilitated the Anchorage City Hall being renovated in 1992 for the then-owner Warehouser Mortgage Company; eight years later, they were ready to get out of the state, so he bought that building from them and that's a current and ongoing lease subject to annual funding clause. He said he developed the downtown fire station, he developed as a partner the convention center and the Linny Pacillo garage but those were all done with

capital budget monies, not leases. He has a lot of experience and he is working on other projects in the Lower 48 with other local governments, but again, those are capital appropriations.

SENATOR MICCICHE said that his only point was that this had been a difficult deal since long before this particular stage, when this happened and there was no space available, they went with someone with the experience in developing similar types of properties; it's not that this was a one-time deal for Mr. Pfeffer, he's got a lot of applicable experience and he thought that, with the times that we're at, this is exacerbating a difficult situation and he wanted folk to be aware of that.

VICE CHAIR HERRON said that with regard to exercising the right to termination which is in the contract, this was probably the crux of the whole decision. He said the Legislature had used it in the past, it was the Behrend's Building, and it was in the last year of the lease and the lease was \$300,000. They sued and we paid them off \$300,000, so the Legislature didn't win that legal battle. He said he spoke with Angela Rodale, the executive officer of the Permanent Fund, and her caution to the Legislative Council is, again, that if we exercise this right, members have to realize the potential problems that could come down the road. So, using the Alaska Permanent Fund as an example, in our near future, hopefully within seven years, we could ask the Permanent Fund, if they're interested in investing in it, other people would like to invest in it, but if we do exercise that right, it will always be a concern not only to the Permanent Fund but to other people that wish to invest in Alaska. He said we can talk about all these scenarios, and the history, etc., but the decision is about do we really want to exercise that right or try to figure something out, some other alternative.

MR. PFEFFER said they've gone on the record as saying that they realize that the fiscal situation is different today than when the decision to ask us to do this was made. So, their mantra has been let's find a pathway to savings. They know the Legislature needs to save money, they believe there are numerous ways to do that where we don't incur what comes from using that clause, sort of as described by Representative Herron. In a way that they're not necessarily profiting but they're also not taking a big financial hit, so he thought Council had some alternatives in front of them. He knows Mr. Mitchell from Department of Revenue is on the line and he'd seen that hand out and that

definitely looks like a pathway to savings. He said he knows that AIDEA was present and they had some ideas. He said they have put some other options on the table; their debt is fully assumable, so there are numerous ways to do it, but there just hasn't really been a robust dialogue about that. He encouraged Legislative Council to get a committee or team of folks to have that dialogue with them and they are happy to do that as soon as possible.

REPRESENTATIVE MILLETT asked Mr. Pfeffer if he felt like there had been a robust enough conversation and negotiated with him or talked to him about some of the other options. She asked if the dialogue had been back and forth or if he had just been given a set of options - scenario 1, 2, 3, and 4 - and left with no other options. She asked if she could request from him if he did have other options, she wanted to see them. She said she felt it was unfair if Council made a decision without all the information. She said she was starting to feel like she just walked in the door and she gets these options that she hasn't seen before that maybe she's not getting the full picture. She said she would hate to make a decision being new to Legislative Council and just getting involved in this. She had been on the record saying that she wanted to do the most inexpensive thing and make sure that the fiscal house is in order, but she said she also did not want to end up in continued lawsuits about things that may hurt the State's credit rating, that may make the State an unreasonable partner in business. She said protecting the State was the utmost responsibility, also managing the fiscal deficit. She repeated her question to Mr. Pfeffer about whether he felt there had been enough dialogue and was he willing to continue that dialogue if Council was to hold off on making a decision with the only scenarios that we've been presented today. She asked if there was an opportunity to still continue looking at some of these options that she just got this morning that she didn't know were out there. She said it was frustrating at best.

MR. PFEFFER said he would not characterize the conversations to date as robust and back-and-forth. He said there was one meeting in July 2015 where he offered to sell the building for the owners' cost. There was a follow-up meeting in September where he was asked if they could do it less than the owners' cost and he said he begrudgingly said no, he didn't think that was appropriate. He said he was asked to do this level of improvements, it was back-checked and certified before he spent the money, so he said he thought the number should be the cost. That was the last

thing he heard until the memo got laid on the table in November before the last Legislative Council meeting. He said he never saw that memo before it went out, he didn't know what it said, and only saw it after the fact. Since then, he knows that the sheet that Representative Millett held up he believes came from Department of Revenue, he had nothing to do with it. He said he had seen it and all it does is take the dollar amount that we said we would sell the building for and show different ways to analyze how the Legislature would deal with that dollar amount to find savings. He said he knows AIDEA has done the same thing on their own and he believed AHFC has some ideas, but all that's in that memo is the debt service schedule for how to pay off \$37,950,000 over 10 years. He said he didn't believe all the options have been looked at. He added that he was happy to meet and continue a dialogue.

SENATE PRESIDENT MEYER said that Ms. Varni shared quite a laundry list of problems with the building. He said it was certainly understandable that there's always a punch list after there's been a major renovation done. He said one of the Council's concerns was the Auditorium itself; sometimes meetings include an executive session and the noise carries over into the halls. He asked if Mr. Pfeffer had been made aware of the problems.

MR. PFEFFER said that he checked with his property management person and they are responsible for maintaining the mechanical systems in the building. There have been service calls with regard to that and his people get right on them. He asked if there was a good email record of back-and-forth call response and it was his understanding that there was although he hadn't dove into the details of that. With regard to other things, whenever a project like this is finished, he gets a one year warranty from the contractor that he hired and so there's a warranty period under which he can go to the contractor about issues and they'll take care of it. In order for him to do that he needs to know what the issues are. He said he hadn't had a lot of communication about that. He heard a list that was shared at the last Legislative Council meeting, some of the deficiencies, and said that's really the first he had heard of it other than the mechanical service calls. That one year warranty is up December 31, 2015, so two weeks; but having said that, he said they would honor an extension of that and they would get in here and take care of whatever needs to be done. In response to a follow-up question by Senate President Meyer, Mr. Pfeffer said that he thought it was possible to better sound proof the Auditorium.

REPRESENTATIVE MILLETT asked Mr. Pfeffer that when the Auditorium was built and the other conference rooms were built, was sound-proofing part of the specs he had.

MR. PFEFFER said that in the specifications that they prepared with the Legislature's consultants, there were STC ratings - Sound Transfer Coefficient ratings. He said he knows all the walls and ceilings meet and exceed STC ratings for these kinds of rooms. Where he thought it fell apart was with the glass doors and with the crack between the doors. In terms of everything else, he thought it was all workable. He said they would take a look at the glass doors because any time there is a crack, there's going to be sound through that crack. In response to a follow-up question from Representative Millett, Mr. Pfeffer said the Auditorium wasn't supposed to be sound-proof, it was supposed to be a room with the right STC ratings, which doesn't mean sound-proof. To get it sound-proof, the doors would need to be replaced.

REPRESENTATIVE JOHNSON said that just for the record his new window in his office in Juneau actually leaked and had to be fixed, so that window is considerably newer than anything in this building and it was leaking.

CHAIR STEVENS thanked Mr. Pfeffer for taking the time to be here today.

REPRESENTATIVE JOHNSON asked if Mr. Pfeffer would be able to please stick around in case there were additional questions. Mr. Pfeffer indicated he would be available.

CHAIR STEVENS asked Ms. Varni and Mr. Gardner to return to the testifier's table. He asked if there was any response to what had been discussed in the previous testimony. He said he would be particularly interested in information about exercising the right to termination or anything else they would care to speak to.

DOUG GARDNER, Director of Legal Services, said that he has discussed the termination clause language with Legislative Council on a number of occasions and it's all been within executive session. He said that present in the audience was Mr. Jim Gottstein, an opponent of the Legislature in some litigation, so he said he would tailor his comments with that in mind.

CHAIR STEVENS said that if Mr. Gardner thought Council needed to enter into an executive session because of legal issues, to please advise him. As much as possible he wanted to be on the record since this has gone on forever and it could go on forevermore; because members don't come to some meetings and when they do come, they have more questions, and this could just extend for the next 10 years as it has extended for the last 10 years.

MR. GARDNER said he would respond in a way that he thought was appropriate. The lease is public and mentions the right to termination on a number of occasions. He said he agreed with Mr. Pfeffer on a couple of points, one is that the Legislature does have the right to exercise the clause; it's in the lease, and it's in the lease in multiple places, not in some hidden fine print at the bottom. It has to be in the lease, as Mr. Pfeffer observed, it's in all the leases that the State has. It's there because future legislatures cannot be bound and it's there because long term state debt cannot be contracted. It's a vehicle that allows termination for an appropriation decision; and this is a quintessential appropriation discussion. The question is does the Legislature have the money to remain at its current Anchorage location because of changed circumstances. He said he didn't want to comment on whether it creates an issue with the State's credit rating or how it may affect other leases; those are policy decisions that the Council needs to make. He said the Legislature has the right to terminate the lease for non-appropriation. He said that as Council works through this, ultimately, if a court were to evaluate that, a court would find that the Legislature has that right to do that. He said he recognized that with Mr. Pfeffer, that's a painful process and one that likely would be avoided if possible, but it is a right the Legislature has nonetheless.

Mr. Gardner said his purpose at being at the table today was to follow on from Ms. Varni's presentation that went back over the cash flow analysis that's been presented to Council before. At the last Council meeting, several members asked questions about the scenarios that were presented and they wanted an update on net present value, some issues related to discount rates and inflation. As Council is aware, there is a contract with Serena Carlsen, who is a partner with Stoel Rives in Seattle and is online today. Stoel Rives Anchorage represents the Legislature in litigation with Mr. Gottstein. He said also available for questions is Peter Shorett, who he hired to both appraise the Anchorage LIO and to provide Council with a financial

analysis that members have in front of them. Those are the scenarios that say "Scenario Analysis for Legislative Affairs Building" with a turquoise heading at the top. He said he would like to try to efficiently ask a series of questions to Peter Shorett and, where appropriate, Ms. Carlsen, and go through these scenarios and to facilitate the conversation. He said one of the important things for the public that is watching and for the members present in evaluating this is to understand what the inputs are to these models. Financing is all about inputs and some of the assumptions that we've made, he's noticed, may be a little different than some of the assumptions that Mr. Mitchell may talk about and that is probably a result of different availability to information.

CHAIR STEVENS noted for Council members that there are two documents Mr. Gardner will be referring to in his discussion with Peter Shorett, one at 5% discount rate and one at 8.25% discount rate.

MR. GARDNER said he was going to pick the 8.5 percent discount as most of the remaining variables remain the same, so once members understand the first spreadsheet, it's simple to see what the difference in the 5 percent discount rate is to evaluate the second one.

Mr. Gardner confirmed that Mr. Shorett worked at and was a partner in Kidder Matthews in Seattle. He confirmed that Mr. Shorett has been qualified as an expert in court before on matters related to real estate appraisal and the topics that he will address this morning. He confirmed that Mr. Shorett had been listening to the discussion today and that Mr. Shorett was familiar with the numbers that Ms. Varni worked through, which Mr. Gardner described as the cash flow approach to looking at how to buy or otherwise continue to lease the 716 W 4th Avenue building. He confirmed that he had hired Mr. Shorett to do an appraisal of the building to help understand options to be used by Legislative Council to either purchase the building or address the financing of it.

Mr. Gardner confirmed that Mr. Shorett had the Scenario Analysis for Legislative Affairs Building with the note in the left that all scenario variables are at 8.25 percent. He asked Mr. Shorett to discuss what is a discount rate and why did he use 8.25 percent.

MR. SHORETT said that a discount rate is a rate of return that an investor would expect on a real estate investment.

It factors the time value of money, which basically is the theory that the value of money you have now is greater than the promise to reach or receive the same amount of money in the future. He said it's a rate that's used to basically convert the defined cash flow into a value. He confirmed that, per Mr. Gardner's comment, he assumed for purposes of both models that there would be a 3 percent annual increase in operating expenses. He confirmed, in response to a question by Mr. Gardner, that the models are based on a purchase price of \$37,950,000; he agreed to Mr. Gardner's assertion that the price, which the owner had just reduced to \$36 million, was based on an original purchase price of \$37 million plus the prepayment penalty of \$950,000.

Mr. Shorett, in response to a question by Mr. Gardner, said he would explain the term "reversion price" in the context of the analysis he did. The analysis he performed based on the direction from Mr. Gardner in terms of various assumptions is modeling a cash flow, and in looking at the present value of that cash flow over a 10 year period. The "reversion" is a word that is used to describe the sale event of a property at the end of a hold. In other words, most sophisticated investors that use discounted cash flow analysis, which is what is being done here, that make projections for rent, etc.; and then, at the end of that 10 year analysis, they assume that they will sell the property. The investors initially put the money out as a cash out flow and then, in turn, the property sells. It is the future event of the sale of the property at the end of the tenth year.

MR. GARDNER confirmed with Mr. Shorett that, in reference to Scenario #3 - purchasing with Certificates of Participation - that number, when compared to moving to the Atwood Building, those costs begin to look like there might be an advantage potentially to purchase the building, the closer those numbers come together. He confirmed with Mr. Shorett that the assumption on the purchase versus the moving to Atwood is a way of looking at this transaction but part of that analysis and that number means the Legislature sells the building at the end of 10 years. He confirmed with Mr. Shorett that if you go through the analysis with net present value, but the Legislature does not sell the building at the end of 10 years, then it's really costing the price noted in Mr. Shorett's scenario, in this case \$14,300,000, plus the amount of the value of the building at the end of the 10 year period. In response to a request for clarification by Mr. Shorett, Mr. Gardner said the assumption is that state governments don't tend to



acquire buildings and then sell them in a short time period, they tend to occupy or own buildings for the long-term. Given that assumption, Mr. Shorett agreed that the value would go up if that were the case, as described by Mr. Gardner.

MS. CARLSEN, Partner at Stoel Rives, LLC, interrupted to say that under these assumptions, the cost would go up but the value would be in the asset of the building rather than the cash from the building.

MR. GARDNER said that was a good point and that at the end of a Certificate of Participation process, if from a cash flow standpoint, you want to get to that number of \$14,300,000, the building needs to be liquidated. If the belief is that the building is an asset and the Legislative Council wants to have that asset instead of money in the bank, then the comparison that's closer to moving to the Atwood, it makes this process more competitive. If the Legislature doesn't sell the building and the primary concern is purely cash flow, then it isn't as competitive.

MS. CARLSEN said that was correct and added that you would have to remember that you do still have the value of the building and you can sell it. She said the second point is that this scenario shows the value of the building in a general market scenario rather than as a specialized building.

MR. GARDNER directed to Mr. Shorett that if the assumption that was discussed earlier on the reversion price, in other words if the amount that you get for the building at the end of 10 years, if it is just viewed as an asset on the books or if it is sold, the higher that number goes, the more competitive the purchase is with moving to Atwood. Mr. Gardner reframed his statement to say that Mr. Shorett had appraised the building without the lease and without the lease, the building is perhaps worth less than with the Legislature's lease.

MR. SHORETT confirmed that was so and offered the following explanation. The reversion price represents the value of the property that he estimated in July 2015. That appraised value was \$20 million. That appraised value assumed that the State would not be in the building but that there would be a market rent paying tenant, not the rent that the Legislature is currently paying. To further address this issue, he said that if that reversion value were higher, there would be more asset value and the occupancy cost

would become more in line with moving to the Atwood Building.

MR. GARDNER asked Mr. Shorett if there was an argument to be made that the reversion price that he had assigned to the building at the end of the 10 years may be a little on the conservative side; that the Legislature may actually have a more valuable asset at the end of the 10 years. He said perhaps that is a judgment call.

MR. SHORETT said no, it was not a judgment call. There was an answer to that and the answer was that there is value to the State because the building suits their needs, but there probably isn't value to too many other tenants in that market. The State has to look at their real estate a little bit differently than the market might because of the more unique requirements in how the space is laid out.

MR. GARDNER asked if the issue was for a higher value of a building like this. He said there are a lot of public spaces, a lot of large meeting rooms in this building; was the consideration to purchase a building like this that this kind of building might be worth more to the State than it might be to a private party. In other words, a business might not want to pay as much to be in here, but the Legislature asked for improvements and, ultimately, the building is more suited for a public use than it might be for a private space. He asked if this was a problem that municipalities and states have to deal with in terms of valuing an asset.

MR. SHORETT said it was not uncommon that there's a special purpose-type use building like the Legislature has. He said he described it as special purpose because of the Auditorium for example; that's not a common type of improvement for even a lot of other state buildings. The large lobby area is another atypical improvement but it suits the needs of the Legislature, so there's value to the State for those improvements. He said it's not uncommon for other agencies and the like to have a value premium to do their business, so it's kind of the cost of doing business.

SPEAKER CHENAULT asked Mr. Shorett if a tenant-occupied building would have the opportunity for a higher purchase price than a building that was sitting vacant.

MR. GARDNER, in response to Mr. Shorett's not understanding the Speaker's question, attempted to clarify. He said Mr. Shorett valued the building at \$20 million but if there

were tenants in the building, that amount would certainly be higher and asked Mr. Shorett if that was correct. Speaker Chenault agreed and added if the building was occupied or unoccupied, would that make a difference in the reversion price.

MR. SHORETT said it would make a difference and his appraisal was based on the assumption that the building would be occupied by a market rent paying tenant. He said he believed he assigned a rent value to the property of \$3.50 per square foot. If it was not occupied, it would probably have a lower value because of the need to lease the space, so there would be lost income and tenant improvement requirements, and the like.

MR. GARDNER said he'd like to close by requesting a summary from Mr. Shorett. He said Mr. Shorett knew that Legislative Council was looking closely at possibly moving to Atwood versus perhaps financing a purchase of this building and let's get down to the crux of it. He asked Mr. Shorett about the pros and cons of moving to the Atwood Building from both a cash flow standpoint and a purchase standpoint, and what are the pros and cons based on his analysis of purchasing the building with Scenario #3 and Certificates of Participation.

MR. SHORETT said he hadn't been prepped on this and would try to be as succinct as he could. He said he had been to the Atwood Building but had not seen the space the Legislature is considering. He said he would have to make the assumption that the comparison would be apples-to-apples with regard to how nice the space was; the space that the Legislature is currently in is very nice space. He said he can't imagine the Atwood is going to be quite as nice as that. He said that two scenarios were run - 5A and 5B. 5A was looking at 30,000 square feet that was on the table as being needed by the Legislature; and we also looked at it as though it was the same square footage of what of the current space. There is not a huge difference between those two numbers - \$8.5 million and maybe \$11 million, so a couple of million dollars difference. He said he heard the discussion about parking and there was better parking at the current location. He said at the end of the day it is clearly a lower cost to move to the Atwood Building than to stay at 716 W. 4th Avenue under the current lease. The numbers don't actually reflect what exactly is happening because the scenarios are for 10 years and the Legislature has already burned one year off the lease. If you look at the cost of staying in 716 W. 4th

Avenue, it is very significant, it's \$27 million, under the current contract. It appears that the financing options are very attractive, but there is a downside to financing although he was surprised at how close the numbers were. He said there are three main components of expenses or cash outflow. One is the debt service, the second is the operating cost, and the last is the purchase price and then the sale of the property. The Legislature has the ability to borrow at such a low rate that it makes borrowing extremely attractive. He said that the problem is that with a purchase price of \$37.9 million and the Legislature only receives a reversionary benefit at the end of something that is considerably less, then the Legislature will incur a loss. One of the things that this covers up, the purchase with fixed rate bonds or certificates of participation, is the deferral of that loss for 10 years; and that has to do with the time value of money. He said, in other words, instead of incurring that loss now and writing a check for \$37.9 million, the Legislature is deferring that.

VICE CHAIR HERRON said to Mr. Gardner, just for clarification, let's return to September 19, 2013, letter that Ms. Varni signed, and that he assumed Mr. Gardner prepared, that's certifying that the appraisal that we had was the value at that time.

MR. GARDNER said that was correct. That letter was based wholly on the appraisal done by Tim Lowe that AHFC worked through. That's a number that was delivered to both he and Ms. Varni; and they asked Mr. Lowe a number of brief questions before they worked through the September 19, 2013, letter. He said the issue with this appraisal is that's the value of the building with the Legislature occupying it with a fairly robust lease for a public space. That is not necessarily the same as the valuations that Mr. Shorett's talking about. The letter is accurate and he doesn't have a reason to believe the Lowe appraisal isn't accurate, but the appraisal views the building with the Legislature leasing it; if we leave, then there are different numbers that have to be addressed. The amount that someone would pay to lease it would be a market rate; we have a rate that includes the improvements that we asked Mr. Pfeffer to put in. He said he respected Mr. Pfeffer, he worked with him a lot and Mr. Pfeffer did what he said he was going to do. He built the building that Legislative Council asked for, but as a public space, more expensive than it would be as a law firm or a bank or something like that. He asked Ms. Carlsen if she thought that was a fair response to Vice Chair Herron's question.

MS. CARLSEN agreed that it was. Clearly, the building would not have been built at the cost that was spent if the Legislature was just going to go out and get a market rate rent.

REPRESENTATIVE JOHNSON said he is still having trouble with the apples-to-apples comparison on 10 years. If we own the building, it's a 40 year building, why aren't we amortizing it over 40 years instead of 10; what did that do to the numbers. He directed a question to Mr. Shorett about whether he had ever done something like this on a 10 year basis; is 10 years standard or is it longer term.

MR. SHORETT said that was a very good question. He said this was the term he was asked to consider; however, he did look at longer term financing and the relationship between the numbers don't change considerably. Obviously, the numbers go up is what happens. At the end of the day, the Legislature is buying a \$30+ million building and the value has to be realized over a period of time. This is a little bit different scenario because it's an occupancy cost analysis, it's not an appraisal of the property.

MS. CARLSEN interrupted to say she just wanted to make it clear that Mr. Shorett did use a 20 year amortization period in the scenarios before Council. While the cost are looked at in a 10 year period, which was chosen because the lease was for a 10 year period; but the amortization of the building has been done on 20 years, which is a market-based look at amortizing a building.

CHAIR STEVENS said as Council will recall, we have scenarios for a 20 year period and the 10 year scenarios were used because the lease was for 10 years, allowing for an apples-to-apples comparison.

REPRESENTATIVE JOHNSON said he wasn't sure he agreed with that statement. He said that comparing a 10 year lease with a 10 year purchase isn't even in the same vegetable group, much less apples-to-apples. He said we are really talking about cash flow in a time when we don't have a lot of cash, so in terms of cash flow and the price per square foot, to do a 10 year comparison with a 30 year comparison doesn't make sense. For example, a cost per square foot of \$7.41, if taken over 30 years, the cost of the building is paid for and after that it's the cost of maintenance and upkeep, so that needs to be figured on that cost per square foot if we're going to have a legitimate conversation about cost.

He said in the 20, 30, and 40 year scenarios when the Legislature is paying \$1.70 or \$1.60 per square foot, what's that going to look like. If Legislative Council in 30 years is looking at this and saying we're paying \$1.70 per square foot and you look around, that's going to be a pretty sweetheart deal. He said he thinks we need to look at cash flow and he doesn't think anything in here does that. Hopefully with Deven Mitchell and AIDEA, maybe there's an opportunity to look at those numbers and we can compare strawberries-to-apples, which is what he thinks needs to be done.

MR. GARDNER asked if Mr. Shorett could respond to Representative Johnson's point. He asked Mr. Shorett what is the impact, to the extent he knows, on cash flow over time. If the building is purchased over a 30 year period, what do the Legislators have to confront then each year in their budget from a cash flow standpoint.

MR. SHORETT confirmed that all the attachments to his spreadsheets were handed out to Council. He said that his answer is that if members look at each of those sheets, then for leasing, staying in the 716 W. 4th Avenue building is \$4,032,000 annually. In the second scenario, it's \$1.26 million; third is \$2.5 million, and you can see the numbers are there.

MR. GARDNER clarified that he believes Representative Johnson's concern is have we analyzed what a cash flow would look like if we purchased this building over a longer period of time and what does that do to the annual total cost from a cash flow perspective.

MR. SHORETT said that the longer you stretch out a loan, the lower the debt payments are. Your operating costs are consistent. It really depends upon the assumptions that are used. He said he didn't know what vehicles would be used for financing. If it was bond financing, you're paying it back in a lump sum. If it was Certificates of Participation financing, you're paying principle and interest. He said he didn't know how long those debt loads could be carried.

MS. CARLSEN asked if it was fair to say that it would depend on over what period of time do you want to pay the purchase price. Once you've paid the purchase price, obviously the cash flow price goes way down because it is just operating expenses at that point. It goes back to the discussion about deferring when the purchase price is actually paid. There was a short discussion between Ms.

Carlsen and Mr. Shorett clarifying the details. Ms. Carlsen then said that if the debt payment was stretched over a longer period of time, there is more interest, but the actual out of pocket every year goes down.

REPRESENTATIVE JOHNSON said that under any of the scenarios where the Legislature purchases the building, in year 2036, we would only be paying \$525,000 per year adjusted for inflation to be in this building. In year 2036, we would be paying under \$1 per square foot and is that or is it not a good deal.

MS. CARLSEN said in some ways it's the situation being faced in the Atwood Building right now because that building is paid for. So all you have is the operating expenses.

MR. GARDNER asked if, ultimately, under any of the purchase scenarios, the Legislature would have the value of the asset. If the Legislature sold it, there would be cash in the pocket; if they valued the asset on the State's balance sheet as the building as it is right now, that asset would be owned by the State. Under any of the purchase scenarios, the cash outlay would have to occur each year to make the purchase, so there would be a cash flow on the purchase, so you realize the gain at the end. It is either sold or it is an asset on the balance sheet. Ms. Carlsen agreed. Mr. Gardner repeated that each year, the Legislature would need to appropriate the sufficient amount to purchase it, which is in Mr. Shorett's analysis.

MS. CARLSEN said that was correct and it just depended upon how the purchase was financed. That number changes based on how it was financed and over what period of time.

MR. GARDNER said that Representative Johnson's point was that once the building was paid for, then you start reaping the kind of savings that are consistent with the Atwood Building. Ms. Carlsen agreed.

SENATOR MICCICHE said he felt that we were softening the value of ownership of the asset. Someone made the statement earlier that we do have the value in the building and we can sell it if we were to purchase this building. He said he noticed the ownership value remains at \$37,950,000 and that there is no escalation in that value over a 20 or 30 year note period. He asked how would escalation in value be applied and assume a reduced long-term per square footage cost. He further asked how that would be applied in

understanding which is the right way to go at a lowest cost per square foot basis.

Discussion followed between Mr. Gardner and Senator Micciche in an attempt to clarify Senator Micciche's question.

SENATOR MICCICHE said he wanted to know how to capture the inflation in the value of an asset as they make this analysis considering we'd be holding a real asset as a state that could be sold. There's no ownership value in the Atwood since it is already owned. There would be a substantial ownership value somewhere above \$37,950,000 at the end of a financing term, whether that be 20 or 30 years.

MR. SHORETT said it really depends upon the assumptions that are made. The assumptions that he has made, which are reflected in the reversion price, is the \$20 million escalated at three percent a year. Most investors, when they do a cash flow model, use three percent a year, it's a very common escalator factor. Now, if you're looking at it from an owner/investor prospective and you want to be in the building, then you might use a different number than \$20 million. At the \$37,950,000 price, you have a lot of ground, a lot of years to make up to get to that number if you use the \$20 million figure. He said if you're assuming that you're not in the building, than you have 25-30 years before you get there. The other thing to factor and recognize is that it's not going to be a new building anymore. Right now, it's almost a brand new building, subject to some renovation of the building; but the condition and quality of the building will be considerably less in 25-30 years than it is today.

MR. GARDNER said that in Mr. Shorett's appraisal, he also looked at the replacement costs of the building. That is a different value.

MR. SHORETT said that the building is so unique that he looked at how much it would cost to recreate that building; not rebuild it in the same site, but to find a similar site, similar land, and recreate the building there. The cost numbers when he added the cost to develop, provided a reasonable developer's profit, before assigning any depreciation to it, was somewhere around \$35 million. When he came to look at it from the prospective of the current building, recognizing that it is not a new building and that there are some dated components of the building; he



believed he took a 10 percent depreciation off and came up with a lower number. That contrast what was actually paid for the building, or reported to be paid, of \$44.5 million and the big difference there is that they were working around an existing building as opposed to starting fresh from scratch.

MR. GARDNER said if you used that number as a reversion value, if you can do so, what does that do to giving weight to the ownership of the asset at the end in terms of making this more attractive from a purchase standpoint.

MR. SHORETT said it raises it considerably. It brings the value of the property, assuming that it's going to be reverting back to you, to a price point that is more consistent to the price that you are actually paying. So if he were to put in the price that you were actually going to pay into the reversion, the cost of ownership goes down considerably and the cost of ownership then is just the cost of financing.

SENATOR MICCICHE said that was the answer he was looking for. He does think there is real value in ownership, not saying that's the way he is going, but he does think it's something Council has to carefully understand before they make the decision.

REPRESENTATIVE KITO said he thought we might be talking a little too far ahead of ourselves. The people of Alaska do own the Atwood Building. It may not be the Legislature but it is the Administration. In this time when we're asking everybody to tighten their belts, it's not well-advised for the Legislature to be looking at buying a new building when we can get past that purchase price already in the Atwood and pay basically the operating costs, post-purchase, for space in that building. We avoid the expenditure of the \$37 million for the State of Alaska and we're in a situation where we are just paying for the operating costs.

REPRESENTATIVE MILLETT asked how much money has been spent to renovate the Capitol Building in Juneau. She asked if we should we stop that renovation too because we're broke.

MS. VARNI said that money is already set aside, it is encumbered. It is a four year project for a total of \$33 million. The building needed new windows; to change from the steam heat; there were lots of problems with pieces of brick and cement falling from the building. The Legislature owns that building and we need to maintain that building.

This committee approved that project, which is going very well and is on time and on budget. It's something that will last us another 80 or 100 years.

CHAIR STEVENS, in response to Representative Millett's request for a follow-up, said he thought Council was getting too far afield and didn't know what the Capitol Building had to do with this discussion. He allowed Representative Millett to ask her question.

REPRESENTATIVE MILLETT said her question was in response to Representative Kito's comparison that we're spending money and she said we're spending lots of money in Juneau. The operating costs alone, she can't imagine the heat bill. So, if we're going to tighten our belts, we should really tighten our belts and start thinking about things that aren't necessary.

MS. VARNI said the Capitol Building Renovation and Retrofit was necessary. It was a project that needed to be done and the Legislature needs to maintain its buildings. Going back to the maintenance on the 716 W 4th Avenue building, she said that Mr. Pfeffer and his staff have been very responsive. The items that she listed were just to let people know that there is substantiation for having a building manager for this building if Council decided to purchase it, because the number of maintenance problems are ongoing. Unlike other property management companies that the Agency has had to deal with in the past 20+ years the Legislature has had offices in this building, Mr. Pfeffer and his staff respond quickly and it has been outstanding.

SENATOR MICCICHE said he normally doesn't do this but he's going to. He said he's not sure he appreciates someone advising him on what to ask. He said he has a deal with his constituents and that his vote on operating this government is going to be on the lowest cost per square foot that he can possibly find. In order to do that, he needs to understand all the aspects, not just with surface factors, but to look deeply into what the value of this decision is in the long-term. He said he's going to ask every question associated with that so that he makes the right decision. He just wanted to make sure that when we're talking to the people of Alaska, he thinks he has a record that proves that's the way he's going to go, but he wants to make sure he has the right information. He appreciated the Chair giving him the opportunity to state that.

REPRESENTATIVE JOHNSON said he wanted to go back to the value of this building in the future. He asked if Mr. Shorett had any idea what the Atwood Building is worth today. In response to Mr. Shorett saying he had not given that a thought, Representative Johnson said that he wanted to point out that the State paid \$18 million. He then asked if Mr. Shorett would agree that the Atwood Building is worth considerably more than that today.

MR. SHORETT said he was not trying to avoid the question, but he really had no idea. In order to answer that question, he would need to spend a little time.

CHAIR STEVENS said Mr. Shorett was not asked to evaluate the Atwood Building.

REPRESENTATIVE JOHNSON said his point was that we bought it for \$18 million and it is worth considerably more than that now. It's a building the State has owned for 15-20 years. He wondered what this building was going to be worth in 20 years; maybe nothing if our economy continues to go down. That's the point of reference that he'd like to look at as opposed to two percent evaluation over a 30 year period divided by the sum of the square of the earth.

MR. GARDNER said he had no further questions for Mr. Shorett. His goal was to facilitate the discussion and to ensure that some of the questions that have been asked at previous meetings were answered today.

MR. SHORETT said he wished Council luck, he knows it is not an easy decision and if he can be of any help, please let him know. He agreed to stay online in case further questions arose.

SENATOR MACKINNON said the only thing that hasn't been brought out that was discussed at the previous meeting is that there is revenue that the current facility is generating that hasn't been used in any of the calculations put before the Legislature. Apparently there are some antenna rentals on the top of the building, as well as some minimal income coming from the existing parking structure. She wanted to make sure that as Council looks at the analysis on all of the components comparing the advantages and disadvantages to moving or continuing the current lease that there is a revenue structure in this current lease; as there could be at the Atwood Building if we utilized less space than what is there today. She put that forth for

consideration for those who may not have been at that earlier meeting.

CHAIR STEVENS, with agreement from Ms. Varni, said that the next step was to hear from Deven Mitchell with the Department of Revenue about his projections.

DEVEN MITCHELL, via teleconference, said he hadn't planned to make any comments. He did, at the request of Representative Johnson, put together a somewhat simplified analysis of some different cash flows related to the potential decisions before the committee. He said he understood that analysis had been distributed to the Council. He said he agreed with Mr. Shorett and the declarations he's made about the present value calculations. He said he was not an expert on real estate pricing and Mr. Shorett's expertise should be valued in that arena. He used a discount rate of five percent. He said he wasn't necessarily looking at it like Mr. Shorett would have. He was maybe looking at the expected earnings of the Permanent Fund or the Retirement Trust or the CBRF, other places that if money is spent in the future, where it might reside and where it might be invested in the interim time frame for purposes of establishing a discount rate and that's how he arrived at five percent. As far as the value of the building, he just used a very simplistic assumption that the building is worth the purchase price today or in the future; meaning that you would anticipate that the building would appreciate through time and if you bought it for a price today, that's what it's worth and you could turn around and sell it today presumably for the same price.

Mr. Mitchell said it is a difficult analysis and that is very apparent to everyone. There are two different things on the table with the move to the Atwood Building versus the options with 716 W 4th Avenue building currently occupied. One of the components that maybe hasn't been discussed as much as it could is the move to the Atwood Building is what otherwise is going to happen to that 30,000 square feet in the Atwood Building if the Legislature doesn't move in. Is there an opportunity cost, is there going to be less expensive or folks that don't need the same quality of space or don't need to be located downtown that are going to be placed in that space as an alternative to the Legislature. He said there is some additional analysis that could happen on that side to determine what the true opportunity cost of moving into the Atwood Building might be. As far as the alternatives

related to the Anchorage LIO Building, from his perspective, the alternatives seem to suggest that purchasing the building is going to be better than maintaining the status quo with the lease arrangements that the Legislature's currently in. This analysis has the same deficiency that Mr. Shorett pointed out, that it is a 10 year analysis when one year has already expired from that 10 year period, so it is off in the same fashion that Mr. Shorett discussed. He said that was really the extent of the comments he might make associated with that analysis.

Mr. Mitchell said he was here before the committee as the State's debt manager, not as the Alaska Municipal Bond Bank's executive director. With that in mind, there's been discussion about the potential of a failure to appropriate for this lease, resulting in a downgrade of the State's credit. This State's credit is somewhat tenuous at this point. We have negative outlooks from Moody's that was put in place in December 2015; we have negative outlooks from Standard and Poor's that was put in place in August 2015; and by definition those outlooks imply that there's going to be 30% chance of a ratings change within the following 12-18 months. There's already stress on the State's credit rating; as has been discussed, there is a prohibition in the constitution on dedicating revenue which results in the subject to appropriation clause in lots of different contracts, including this one. This lease wasn't a secured type lease of the State of Alaska like the Atwood Building was when it was purchased. It doesn't carry a rating based on the State of Alaska's balance sheet but it would, as Mr. Pfeffer mentioned earlier, send a negative message to the banking community as well as the underwriting community. In the national market right now, there is some stress on subject to appropriation type credits that are out there due to issuers like Puerto Rico and Detroit, Michigan, not paying on those types of obligations. So, if the State of Alaska, with some of the negative news that you see, both locally and nationally, related to the low price of oil and the correlated reduction in state revenue, if we start not paying on obligations, it's just going to be one more negative story for potential investors to consider or our credit analysts to take into consideration when they're reviewing how to evaluate our credit, which is essentially the investors' trust that we're going to repay the obligations that we say we are. Mr. Mitchell ended his testimony and made himself available for questions.

REPRESENTATIVE JOHNSON thanked Mr. Mitchell for being available on a Saturday. He said that when he looks at the

scenarios from LAA, specifically Scenario #4 to purchase, he sees a square footage of 53,479 and he noticed that Mr. Mitchell used 45,371 square feet. If Mr. Mitchell was to use the same square footage number as Scenario #4, that would basically lower the per square foot cost. Mr. Mitchell agreed. Representative Johnson asked for an updated calculation based on using 53,479. Mr. Mitchell said that in the 30 year appropriation from general funds option, it drops it to \$2.79 per square foot.

There was no further questions for Mr. Mitchell.

CHAIR STEVENS said Council would move on to the material and testimony from Mark Davis with AIDEA.

11:02:14 AM

MARK DAVIS, Chief Infrastructure Officer for the Alaska Industrial Development Export Authority (AIDEA), said that the working assumption AIDEA had was quite different from anything heard this morning. He said their assumption was Council might not want to continue with the lease, and therefore would be interested in a purchase. AIDEA is a finance organization, so we only operate on the basis of purchasing an asset. AIDEA owns assets throughout the state. Examples would be the FEDEX hangar at the airport; the risk there was that land was owned by the Department of Transportation, purpose-built building for FEDEX but they were comfortable with that and it's worked out. AIDEA also built the US Coast Guard Headquarters at JBER; that on a Department of Defense license which creates risk. They have a right to take it back in a time of warfare. The Coast Guard then pays the Department of Military Affairs and then the DMA pays AIDEA and there's risk that the Coast Guard may not have an appropriation from the federal government and there's risk that the Department of Military Affairs may not have appropriated money to pay AIDEA. He said they've worked through these kind of transactions in various things they've done.

Mr. Davis said the numbers before Council reflect a purchase/loan price of \$43 million which was in the report and that includes a maintenance figure. It results in a figure of about \$2.3 million per year. Using the purchase/loan price of \$37 million which was based on a press report of what the developer might be willing to take, the figure comes out to about \$1.9 million per year. He said the testimony this morning was that the building might be for sale for less than that and so that was another possibility.

Mr. Davis said he didn't have many facts prior to attending this meeting, but now that he does, he said a scenario could probably be developed for purchase that would deal with the different tranches of finance. That is, there is a note on this building that is \$28 million; that note is essentially equal to the capital expense lease valuation of the building. If a 35 percent assumption of cost was run in the amount of the lease agreed to by the Legislature, the value of the building would be approximately \$28 million. He said it looks like the mortgage company probably did that analysis. He said there was also testimony that there were construction loans that were taken out by EverBank; typically those construction loans will have construction loan analysis appraisals and he hasn't seen those so he doesn't know what they came up with. When AIDEA looks at a project, they like to dig up all the information. There is a process - there is a suitability committee that they take a project to and the committee has to decide that AIDEA can make a rate of return. Then there's a loan committee that changes depending on what division is doing the project. He said it could be structured in a number of ways. It could be structured at a purchase price of \$28 million for example, that would take out the note, then there would be the issue with the developer of how to pay the residual amount which sounds like it is between \$8 million and \$9 million. He said they ran it by some of their consultants and financial advisors, probably the least expensive way to purchase this building would be for AIDEA to be the owner and then it would be an asset. AIDEA is very interested in the residual value of things it finances, so that if AIDEA owned it, we would definitely run it out for 30 years. He said he ran that lease by their internal committee and they see no reason to finance a 40 year building for less than 30, which is the way they can get the best cost of money and the best return. The nominal annual rate he used of 4.11 percent came from looking at figures from one of their underwriters, Goldman Sachs. The actual bond rates now are floating between 3.5 and 3.87 percent. As Mr. Shorett said very correctly, every investor is going to want an internal rate of return and, as Council knows by statutes passed by the Legislature, AIDEA has to make a rate of return, so there's a little room for that. He said, of course, AIDEA will give some of that back via a dividend, which makes them a little unique; it will be over time, it won't be fast. It does actually reduce the costs over time.

Mr. Davis said in response to an earlier point made by Senator Meyer, if AIDEA did buy this building, and this

would have to be checked with their counsel, it would probably take the building off the tax rolls, which has been the situation with other AIDEA properties. He said there is an exemption from taxation in the AIDEA statutes although it can vary on the type of project. That doesn't preclude a PILT; they have a PILT on the Ketchikan Shipyard, for example. He said that what could be done if the Legislature wanted to save money, a private placement through AIDEA does not need legislative approval. If AIDEA was interested, there would be their own internal process. The AIDEA committees would have to vote that they're interested in owning an asset like this; that it has a rate of return risk analysis, although they are willing to take appropriation risks as illustrated by the two examples he mentioned. So, maximum flexibility is with a private placement debt obligation. The Legislature could also do a tax exempt financing with a private placement through a bank. He said this building might also be susceptible to an AIDEA loan participation depending on the valuation and the appraisal. If it was broken into tranches of 28 and 8, then one of those tranches would definitely qualify under current statutes for loan participation by AIDEA, which is currently capped at \$25 million. The current interest rate for that is about 4.16; that rate fluctuates with the Federal Home Loan Bank of Seattle and that's by statute. That is a transparent number that isn't picked out of the sky, it comes out of an index.

Mr. Davis said municipal bonds could also be used, as Mr. Mitchell has already gone very carefully through. There is less payment flexibility with those. There are multiple investors, higher issuance costs and an extended funding cycle. On the other hand, financing terms could be longer. Mr. Davis said Representative Johnson asked how come nobody had run a 40 year scenario; he said that AIDEA internally just briefly looked at going beyond 30, but this looks like a 40 year building, so you're pushing the life of the building up against the financing, so traditionally that is not done. On the other hand, if the lease was the same as the building then you can sometimes go longer. AIDEA ran 30 years thinking it's a 40 year building, with a 30 year term and a 30 year lease, which is common in commercial transactions; a 10 year residual value, which could be substantial, given inflation, but they'd have to run the numbers; and a change in location.

Mr. Davis said that the next issue is the cost to run it. He said he'd seen a figure of \$525,000 throughout the figures, which strikes him from his experience as a former



transaction lawyer, that you've owned this building for almost a year and we should be able to get actual hard figures for the operating costs. He said if AIDEA was going to look at it, what was actually paid for utilities, what is being paid for maintenance. They'd need the actual figures to run them through because that makes a big difference. Then you'd have an escalator factor as the building ages. That can be covered with a capital lease; it can be covered with a "sink and reserve fund"; or it can be covered with a capital reserve fund. He said there are various ways to structure it.

Mr. Davis said all AIDEA was trying to do was give the Legislature options on purchase. Legal structures can change. This building could also be purchased by the Department of Administration if that was a better way to go. That would make it look more like the Atwood Building. AIDEA could provide project financing for that type of scenario. That might change some of the parameters and some of the numbers, but then it could be managed under the current system and that might be what you would like. If AIDEA owns it, we would not have a project manager; we would not hire someone because we already have building managers under contract. That doesn't mean we can't do it that way. If the Legislature likes it that way and it's an important public policy to the Legislature, AIDEA could run those numbers. They're not trying to give the Legislature any advice on how to run buildings. He said the Legislature could try other legal structures that might effect that outcome of the figures and AIDEA hasn't done that. They could; it would take a little time. It would probably mean sitting down at length with the owners, which they've done many times. AIDEA sometimes buys projects that the owners want to sell. With Ketchikan Shipyard, AIDEA stepped in to deal with issues of devolving federal grants that would not be available if it was under private ownership. The legal structures on how this was approached would affect the overall financing. He said AIDEA didn't assume that the Legislature wanted to keep the current deal. They assumed that the Legislature would want to finance it using AIDEA's capabilities to its fullest to result in the lowest possible cost per month especially given the current fiscal situation.

REPRESENTATIVE MILLETT asked Mr. Davis what would happen if the Legislature does decide to get out of the lease and a lawsuit ensues. She asked him if he could give any history of any other type of lawsuits like this and what the type of costs were incurred and if the State has prevailed on

them. She asked if Mr. Davis could give some of the ramifications if the Legislature decides to move into the Atwood Building and a lawsuit does result.

MR. DAVIS said that on behalf of AIDEA he really can't give a legal opinion on litigation. As a citizen of the state, he said that Representative Herron mentioned the Behrend's Building in Juneau, which is one he is aware of as an attorney. That was settled to his understanding. In the commercial transactions he has been involved with, which are not with an appropriation risk, there have often been disputes and those can be resolved various ways, sometimes in litigation, or by cancelling the deal and trying to restructure it. Obviously, there are significant transaction costs that could ensue.

REPRESENTATIVE MILLETT said maybe the lawsuit question is better directed to Mr. Gardner. She then asked Mr. Davis if this was something that AIDEA would be interested in pursuing on its own without the Legislature's involvement in it and leasing it back to the Legislature. Much like the Atwood Building, government exists, and the Legislature would obviously be a long-term tenant; AIDEA wouldn't have to worry about who would occupy the building. She asked if the Legislature could request that AIDEA do all the due diligence of the process so they could at least have come up with some of the other options so the Legislature is not exposed to litigation and we can find a way that preserves the State's bond and credit rating. She said she is looking for solutions, especially because of the fiscal situation. She said she wanted to be very prudent and make sure that Legislative Council was doing what was best for the State of Alaska. If we end up getting in a lawsuit and owe \$20 million; we need to be fully aware of what we are doing. She said she doesn't think they have gone deep enough and looked at and reviewed all of the options to make a decision today.

MR. DAVIS said that if the Legislative Council wanted AIDEA to, we could take it to our committees. He said he is in charge of what's called Unconventional Finance at AIDEA. An example would be that they recently lent the Bond Bank some money as they were a little short at the end of their fundraising and they stepped in to do that. They also recently did a loan for Alaska Pacific University, which was not a typical loan because they have unplatted land, so they had to take security against the entire University; which is not typical in commercial lending. If there was a request, he thought AIDEA would look at it. It's going to

take time, they would definitely have to talk to go through the record, which they haven't done yet. They would probably want to talk to the Legislature's counsel to see what he has done previously and then they'd want to talk to the developer.

SPEAKE CHENAULT thanked Mr. Davis for putting together the numbers on short notice. He asked Mr. Davis to confirm that the State of Alaska would actually finance a building built on anyone else's property other than the State of Alaska.

MR. DAVIS confirmed that AIDEA has done that before. He said that AIDEA financed JBBER-U.S. Coast Guard; that was through a legislative change and the Legislature let them invest in what's called Federal Facilities. Once AIDEA had that legislative change, they worked with the Department of Defense; they have a license, which is essentially a lease and then AIDEA did the transaction. They brought that building in under budget from the estimates and it saved a substantial number of jobs in the U.S. Coast Guard that were perhaps going to move to Seattle. That was AIDEA's emphasis in doing that. He said AIDEA assessed risk based on how they think they are going to get paid, how much they are going to get paid, and that one did involve appropriation risk.

SPEAKER CHENAULT said he was actually being facetious; he knows that the Legislature does it, the Alaska Railroad does it and numerous other things. He said sometimes when we talk about the history, as Mr. Pfeffer did earlier, he remembers all those reasons why we're in this position that we are today. Maybe it wasn't being built in the right place; maybe it took the building off the tax rolls; maybe it wasn't in the right part of town; maybe the building's old. As we've heard today is all that we really did was update this building, we're certainly doing that in other parts of the state; our Capitol being one on a building that was built in 1928. We're certainly putting a lot of money into the Capitol. We might argue whether that is the right expenditure of funds; we're going to argue about what this building's worth or even maybe what the Capitol Building is worth. Maybe if we would have bought this building 20 years ago, maybe we would be remodeling it today and owning an asset instead of talking about either still leasing an asset or actually buying the asset. He said there are lots of questions, lots of concerns and he does appreciate the information the Mr. Davis brought up. He liked the idea of it. He said he doesn't really have a dog in this fight in all reality. He comes from Kenai and

while he has an office here, it's out of convenience, not out of necessity. Anchorage's Legislators have needed for years and have had a place in Anchorage to be able to meet and have meetings and be able to do the work that they're required to do. He represents nine communities in his district. He has an LIO in his district and it's actually 120 miles from where he lives. There is an LIO in the next district over. Anchorage is a big area. We did receive a letter from a Senator and a Representative about having individual offices in their district, in their community, so they can talk to the people that live in their community. He said he wouldn't even propose that he have nine LIO's in his district so he can go to the people in his area that he represents and be able to meet with them for coffee every day or every other day. There are other people sitting at this table who have a lot more communities than he does in their districts, but we find ways to get to those communities. He said this is a central place. Anchorage is the biggest city in the state of Alaska; there should be a place for out-of-town Legislators to meet. We've had a gentleman that is a member of the House that has been crucified over this building. He said that what he can tell people is that it's not this gentleman's fault. He said he would take as much or more blame for this building because of the inactions of Legislative Council. We have thrown this project under the bus for the last 12 years that he has been on Legislative Council. It's unfortunate that we actually have a lease, a lease that we agreed to, that we've signed, and that we knew the cost of before it was signed. We've had many opportunities to buy; we've had many opportunities to lease; but Council has always found a reason, whether that was that we didn't want to take it off the tax rolls, or it has to be downtown - we can't move to midtown or uptown. Whether it was perceived as a threat whether we build a building or we buy a building that's big enough, maybe we'll move the Capitol out of Juneau or maybe we'll move the Legislature out of Juneau, or maybe we will have special sessions some place other than the Capitol. Maybe we haven't done it because maybe we'll move the Capitol to Willow or some other place in the state. There's always been a reason, there's always been a catch. Unfortunately, there have been many people thrown under the bus and he told the Chair he may not probably be one of them but he could be. He said he doesn't have the answer. He's been looking for information; how could it be put together so that it benefits all Alaskans and not just those in Anchorage. Legislative Council has had to deal with this for the last 10-12 years and we need to make a permanent

decision, not one that just gets us out of hot water with the voters right now, but one that makes actual business sense. He said in order to get to that point, we have to have the information that we need and the options that are available. He again thanked Mr. Davis for the work he and his folks have done. He also thanked everyone else for the opportunities that they've given Council. Even in these sheets, he sees ulterior motives as to why those numbers are how they are. He would never have looked at buying a building of this magnitude on a 10 year loan and he can't think of any other business that probably would have. Why was that number picked, because it was the term of the lease, he assumed. As Council continues to dig down through this thing, they keep seeing new numbers that drive those costs down for not only the Legislature but for the State of Alaska. He said he does believe in owning, he doesn't believe that leasing the majority of the time is of good benefit for the State of Alaska. He thinks we ought to own the assets. If we don't believe that we ought to own assets, than why does that State own the LIO building in Kenai and many, many other buildings around the state? If there's an advantage to leasing, we ought to just be leasing them all and just pay someone else. He said he thought it behooved the Legislature to look at how we invest our money and make those decisions wisely.

REPRESENTATIVE JOHNSON directed to Deven Mitchell asking about exposure costs and whether Mr. Mitchell had any insights into if the Legislature does exercise the option of the lease, what the repercussions would be from a bond aspect.

MR. MITCHELL said that failure to appropriate for this type of lease wouldn't necessarily result in a rating action against the State because it's not a securitization of a subject to appropriation pledge that the State of Alaska authorized by law or where the State's credit was actually pledged. So there's a distinction there, but it would be another negative story in a recent history of negative stories about our state. He said we are talking about other subject to appropriation pledge credits right now, including pension obligation bonds, and future potential undertakings for large infrastructure projects in the state, that if you were an investor, you're going to say, well, they started down a path of not paying when they said they were going to pay. He said the investor understood it was not the same obligation that the investor was buying, but it would make them a little more hesitant to lend them money because they can't be trusted as much as they were

the day before they didn't appropriate for that lease in this circumstance; where you're at the beginning of a lease, you have asked the developer to do something and they've performed and provided a facility that was requested and then we have an alternative that's less expensive and, granted, the times are more difficult now, but from the investor prospective, they're going to potentially use that as a means from extracting more value out of the state.

REPRESENTATIVE JOHNSON followed up to ask about Mr. Mitchell's spreadsheet and asked if it was his building, what would he do.

CHAIR STEVENS interrupted to allow Mr. Davis to leave the testifier's table and thanked him for his time.

MR. MITCHELL responded that on his spreadsheets, the yellow across the page has the present value of the cash flows. For nominal cash flows, go to the bottom of the spreadsheet. He said he didn't inflation proof operating costs, he just used the same information that was in the November 24 memorandum analysis, just flat numbers. For example, the 10 year appropriation, the total cash flows, which is the purchase plus the operating costs comes to a nominal dollar cost of \$43,200,000. If you present value those cash flows of the future, which are really just the operating cash flows, it diminishes to \$42,488,799 that is shown in the yellow box. The ownership value is assumed to be \$37,950,000 either today or the future value of that \$37,950,000. Even though that's a static amount, this analysis assumes you're not discounting that \$37 million, you're in fact doing the opposite by leaving it static when you're comparing it to otherwise present valued numbers. The real cost would be the differential, so \$4,538,799 would be today's cost of buying the building if you were just looking at cash flows. A greater amount for the 20 year option at \$8 million and then \$11 million for the 30 year option. He said for the COP option, it's the same thing essentially. Mr. Davis described different scenarios under which AIDEA might be able to help facilitate the financing of the building or AHFC might under a different circumstance be able to finance the building. He said those alternatives and the COP alternative are all, at the end of the day, going to be fairly similar. The reason why in the 10 year scenario the real cost is actually negative is because the cost to capital for the COP's is 1.94 percent and the discount rate is 5 percent so on those future cash flows you're going to make more money on the money being

retained than you're going to be paying on your annual interest expense and that overcomes that and the operating costs during that 10 year period. He said, theoretically, if you could sell the building at the 10 year term for the future value of the purchase price, you would be able to save \$1 million in real dollar cash flows, so you're theoretically creating money in that scenario. The 20 year option has more operating costs incorporated into it and there's more interest expense as the financing is stretched out for a longer period of time. Your annual cost goes down and your present value cash flows go up and the real costs go up over the value of the building, so if you sold it at the 20 year period - and that same relationship holds true for the 30 year analysis for the real costs goes up to \$3,168,000 - at some point, he said you reach equilibrium where the annual operating costs, the increment of the cost of the real property would be minimized by the number of years in the analysis due to that annual operating expense incorporation. He said for the lease options, the cash flows are pretty self-explanatory. There's not an ownership value at the end and so you just have the annual cash flows present valued for the three lease options within the current Anchorage LIO and then the three options within the Atwood Building, and those have a correlated real cost today.

Mr. Mitchell said in the first six columns, this was really an attempt to do what Mr. Shorett was talking about as well, incorporating some concept that if you buy a building, if you buy an asset, well, there's a value to that. This might not be the right value, it maybe should be a different number. For the information he had, this was the best number that he had to use. He said Council needed to take that into consideration when you're considering your cash flows because after you own the building, there's going to be a benefit. Whether you sold it or whether you had a diminished operating cost; and that's all relative to staying in the LIO. The Atwood Building, as has been pointed out, the final payment is in fiscal year 2017 on the \$40 million of bonds that were issued back in 1997 and so, at this point, you're just paying the operating costs and that's all that the \$664,776 incorporates. So the benefit of that purchase road is already being realized in those three columns.

REPRESENTATIVE JOHNSON said it did answer his question. He then asked Mr. Mitchell that in looking at the columns, which is the best value for the State, in his opinion.

MR. MITCHELL said, of course, like everybody, he's going to say it depends. He said you stay in the Anchorage LIO or you don't and he doesn't know how you make staying in the LIO versus you don't apples-to-apples because they are very different options. He said if you're staying in the LIO, in this environment, you would be considering the use of debt and probably the 30 year debt option because you're going to have the benefit of right out of the gate reducing the annual cash flow by \$1.4 million or thereabouts and so you've got a reduction to the budget; you're going to own the building at the term of the financing; and after that you know you have an expectation of just paying operating costs for some period of time and recognizing that there will be maintenance at some point in the future. He said if you're going to move into the Atwood Building, he said there's a different analysis, although it's difficult to compare the two. There's a different number of square feet, he doesn't know what that space is otherwise going to facilitate if it doesn't facilitate the Legislature; and he doesn't know if that value is comparable to the Legislature moving in there, if it's less or more. Once you start saying what's the best choice, you're jumping across those two different options. He said the lowest total cash flow at this point, just in isolation, is of course going to be the Atwood Building. Going across the bottom lines, you're looking at the 10 year \$10,147,000 in nominal dollars; \$16.8 million for the 20 year and \$24.1 for the 30 year option, with these assumptions that you just have static operating costs and those are more than these other alternatives but you don't own a building at the end.

SENATE PRESIDENT MEYER asked that Mr. Mitchell give his title on the record for the general public and what he does for the state.

MR. MITCHELL said he is the Debt Manager for the State of Alaska and he is also the Executive Director for the Alaska Municipal Bond Bank. As the Debt Manager, he works with the State Bond Committee for issuance of State of Alaska obligations, which would include general obligation bonds; revenue bonds with the State including airport system revenue bonds; Certificates of Participation of the State, which are subject-to-appropriation lease transactions of the State, as well as operating lease securitizations or other special projects including working on things like the pension obligation bond issuance that's contemplated. He said he had been doing this since around 1997. As the Bond Bank's Executive Director, he works with municipalities around the state to issue debt to fund anything that



municipalities fund, from community buildings, ports, harbors, schools, roads, airports, you name it.

SENATE PRESIDENT MEYER said that in the six years that he was co-chair of Finance, he and Mr. Mitchell worked together on a lot of debt issues. He said he knew Mr. Mitchell was in constant contact with the credit agencies and bankers back in New York and back east. He said he was concerned that Mr. Mitchell had mentioned that Standard and Poor's and Moody's, which we've all seen in the media, are concerned about our future outlook. He is concerned about Mr. Mitchell's comments that if we don't appropriate the money to stay in the LIO, then that's just another negative story that they're going to look at and perhaps use against us in the future as to when we get ready to borrow money. He said he would imagine the risk will be greater and we'll have to pay more. So, for potentially looking at and wanting to borrow billions on a gas pipeline in the near future, how much value should be put on this being another negative story.

MR. MITCHELL said that's more of an art than a science. There is a lot going on when they pull the ratings together. Of course, they are looking at a variety of factors and they try to make it scientific, but at the end of the day, there is a certain amount of art that goes into it. He said that he would expect that this, by itself, would be an action that wouldn't have any ratings impact. He said in the broader context right now, it could get more attention than he would suggest that it maybe is warranted from a ratings perspective. What exactly that is, he does not know. He said the real concern that he has would be that a potential investor would see this story and, if we're selling subject-to-appropriation bonds, say well the state failed to appropriate on that operating lease, are they in such bad shape that they can't afford to pay their commitments anymore and where is that likely to waterfall to; maybe this credit is what they say in their minds, whether they truly believe that or they see it as an opportunity to say they need a 3-5 basis point increase in yield, so that's where he sees the real risk. He said there could be some increase in a future issue based on an investor's reluctance to continue to trust the State as much as they might have otherwise.

SENATE PRESIDENT MEYER followed up to say that if Council tried to compare numbers and numbers, should that be a factor we should also consider.

MR. MITCHELL said it was very difficult to say what the impact would be. It would depend on when we were going to issue debt, and of what size, and how recent this story was, and how it was picked up by national media. He said there would be a lot of variables that would go into that. He said it's certainly something that Council should be aware of as you make your decision, that there is a potential that it could have some impact on a future bond issue. He said he cannot define that and the impact could be zero or it could be 5 basis points that we wind up paying in extra yield on a particular sale.

CHAIR STEVENS noted that Representatives Millet and Johnson were in the queue to speak, but before that happened, he invited any other Legislators that are present in the room or are online to address this issue before Council. Mr. Mitchell was requested to stay online by Representative Johnson who had a follow-up question.

REPRESENTATIVE BOB LYNN, District 26 in South Anchorage, said that everyone knows that we have a big problem with this LIO situation. Whatever we do, he thinks should be done expeditiously. He said he knows Council was considering moving out the LIO to perhaps the State-owned Atwood Building and, if we move, that might work out okay and he would certainly hope so. He said perhaps there were some better alternatives; alternatives that would be more practical for Legislators, less expensive and more constituent-friendly. He said the current LIO is underutilized by Legislators, though staff are here of course. He thought it would likely be the same in the Atwood Building. There's a reason you don't find that many Legislators in the building, except during special occasions such as we're going through today. He said he does what most other Legislators do; when he meets with a constituent or some other person, his first choice for the meeting is coffee at a place near his home or near his district. His favorite meeting place for constituents and others is a coffee shop down on Huffman; he calls it his "branch office." He said it works well and it brings the government closer to the people. Most constituents like it better than the formality of a big, fancy building such as this one and maybe a steel office downtown. He said it puts constituents more at ease, especially people that have never met with a Legislator before and there are a lot of them. He suggested that if, in fact, the Legislature vacates the building, put some mini-LIO's in the east, north and west parts of town. There are strip malls and small professional buildings all over the place with space

that could work as mini-LIO's, and the rent would surely be less than it is at the current location. If, by chance, we got into some problems with some future mini-LIO landlord, the scale of the problem would be far, far less than here. We can put a north side mini-LIO for staff in the Atwood Building; that should drastically reduce the cost of renovating the Atwood, as well as the hassle of moving the current occupants all of the Atwood Building to make room for the Legislature. He said he was asking Council to consider the mini-LIO concept and asking Council to have someone pencil out the estimated cost of the mini-LIO such as we've been hearing for staying here in the lease, or buying here, or going to the Atwood Building. He said he thinks that trying to put the whole kit-and-caboodle of the Legislature in the Atwood is going to be interesting. He said he didn't have and doesn't have now, a vote on any of this LIO stuff. He is not on Legislative Council and doesn't plan to apply any time soon, at least until this is over. He said he doesn't envy Council's job, but does appreciate Council's willingness to make tough decisions such as this will be. None of us are going to be able to make everybody happy. He said he really enjoyed listening to what folks have been having to say this morning and thanked Council for listening to his testimony.

CHAIR STEVENS said he appreciated Representative's Lynn's comments and referred members to a document in their packet titled a "Legislator Statewide Office Space Lease Expense," which is exactly what Representative Lynn was talking about. It's all there, and those Legislators in Anchorage are at \$7.41 per square foot. The Chair said for his LIO in Kodiak, it's \$2.29 per square foot; and he has one with Representative Seaton which is \$1.69 per square foot. He said for Senator Micciche, it's \$1.87 per square foot, so it's all over the place. In some places, like Bethel, it is more expensive because of the cost of doing business there.

REPRESENTATIVE LYNN said he assumed that the cost of the Anchorage area would be a little less than someone that is out in the villages. Rent is cheaper here.

CHAIR STEVENS said he didn't think there were any Anchorage Legislators that had offices outside of the Anchorage LIO. He said that was certainly something the Legislative Council would consider and would be glad to work with folks on, particularly if we were in the Atwood Building, we could reduce the space we are leasing from the State there. He said he didn't think we could reduce the space in the

current LIO location but we could sublet, that's always a possibility.

REPRESENTATIVE LYNN said he wanted to point out that he wasn't the only one thinking about this. He said there were several in the majority as well as in the minority who are considering some concept of this mini-LIO idea.

CHAIR STEVENS noted there was also the letter from Senator Wielechowski and Representative Tuck as well, referring to a similar idea of small offices located in each Anchorage district.

REPRESENTATIVE LOUISE STUTES, House District 32, representing Kodiak, Cordova, Yakutat, and several small villages along coastal Alaska, said, unlike the Speaker, she does feel like she has a dog in this fight. She said there is an LIO in Kodiak and there is also one in Cordova that has been reduced to session-only at this point. Kodiak's LIO is a very, very, very active LIO; in the short time that she has been there, there's nary a day that goes by that we don't have a constituent in and out of their office. It is very well-utilized. She said it is very difficult for her to explain to her constituents, as well as for her to understand, when we have urban Legislators that have two and three offices, and we as rural Legislators are being threatened with having their LIO's closed. Her constituents just don't understand that and neither does she. She said she hopes that Council will take that into consideration in making that decision, because it's very important to rural Legislators to have that contact with their constituents; they know where we are, they utilize us, and they are grateful the Legislators are there, just as we appreciate the constituents. She thanked Council and said she appreciated the opportunity to testify.

REPRESENTATIVE LIZ VAZQUEZ, House District 22, representing West Anchorage, Sandlake, Jewel Lake and Northern Campbell Lake, said she wished other Legislators could have had the packet to review previously, she would have loved to have really studied all of the documents. She said it was a very important decision. She said all of the options need to be explored, we need to do our due diligence, because we are talking about facing litigation. She said if we break the lease, assuredly we will be in litigation, either from the parties that we owe the money or, if they go into bankruptcy, we will then deal with a very aggressive trustee. Trustees will go after deep pockets and everybody

knows the State of Alaska has deep pockets. We do have a fiscal crisis in that our income doesn't equal our expenditures, but we do have savings and we do have a Permanent Fund and everyone knows that. She said that, for the record, she did commercial litigation in her previous lives; she has done bankruptcy litigation. She said the judge, the court, the trustee will look at the Legislature's due diligence, what exactly we looked at, did we do our homework properly. She said it appears to her, and she hasn't been involved as she just got elected last fall, from a 40,000 foot level, that we have not done our due diligence and we're going to pay for it if we get into litigation. The bottom line is that it's going to cost us a lot more money. We are talking about paying attorney's fees; we are not talking about \$50,000 attorney's fees and this type of litigation is going to drag on for years, you're talking about millions of dollars. You're going to see probably litigation fees upwards of a half a million dollars if not over a million dollars; and we're probably going to pay damages; and we're going to get bad press. There's water under the bridge what happened previously. She said she thinks we need to do our due diligence, we need to look at the numbers, to look at the facts, and make a decision based on that. She said, by the way, we are spending lots of money in Juneau and she knows the delegation in Juneau harps about we don't need this LIO, whatever, but we are spending \$33 million renovating the Capitol in Juneau. Doing the math here, this is not really accurate because the Juneau delegation would be paying a lot more in rent. She said to the Chair that in the future it would be good to identify all the documents, who prepared them and the exhibit number so that for future reference and even litigation, parties would know.

CHAIR STEVENS noted that the document Representative Vazquez was referring to was prepared by the LAA at the request of Council at the last meeting for that information.

REPRESENTATIVE VAZQUEZ repeated that it would be very useful if that information was contained within the document; the name of the person that prepared it and the date of preparation. She said that in looking at this whole process, it looks like we haven't done our homework. It's very dangerous in light of the litigation and the litigation will come; either through the parties themselves or through a trustee. She said from her experience, her observation, in litigating in bankruptcy and litigating in commercial court, trustees are very aggressive. They take a

percentage of what they collect, so they are very incentivized to collect as much as they can. She said we will have to pause, we will have to take a "patience pill," but we'd better do our due diligence before we proceed to break a lease. She reminded Council about the older case in 1987 that the Legislative Council lost; they broke a lease and they had to settle. She also mentioned an article in the *Alaska Journal of Commerce* that said there may be a negative impact on the State's credit rating. She shared her experience with credit rating agencies. She told Council that while she is not on the committee, she is going to get tagged with whatever reckless actions Legislative Council makes or whatever responsible actions made. She said she is requesting that Council does their due diligence, she's sorry that it is a difficult job and she's sorry that there's a lot of water under the bridge but we need to move on and do our work well.

CHAIR STEVENS noted that the Legislative Council's vote is simply advisory. Whatever Council decides to do is a recommendation to the Legislature. The Legislature makes every decision on any funding; that will be in the budget, worked out in Finance and will be voted on the floor of the House and the Senate.

REPRESENTATIVE TARR said she wanted to be on the record as being present.

REPRESENTATIVE MILLETT requested to AIDEA and to Mr. Pfeffer for them to get together and have a conversation. She said she would like to put politics and emotion aside and actually have an honest conversation about what it means to the State of Alaska if we break our lease; what it looks like if we buy the building; and she said she would like some true costs of moving into the Atwood Building. She said she would like the true costs of when we would be leaving the current building and leasing another building. She said she heard rumors that we're looking at the McKinley Building already and she didn't know who authorized that. She said she would like to know an actual cost of all of this on every option that we have. Right now she doesn't feel like we have. She said she'd like litigation to be equated into that cost also because nobody's talked about the option if we break the lease, what litigation looks like and what we could be possibly losing. Talk about saving money, these are the things that we should be doing. We shouldn't have half of the information that may be slanted one way or another. We need someone independent that doesn't have politics in the back

of their mind looking at this instead of a group of Legislators that are not real estate brokers, that are not attorneys, and that do not do leases every day. We're trying to learn lease issues on a committee on a Saturday afternoon. She said PFD and LIO are all people know and it's going to continue that way if we get ourselves into a piece of litigation, it's never going to end. She said she'd like to put this to bed but she'd like to do it in the right way. She said she'd like to do it with accurate, unbiased, non-political, factual information. She said if she could request that, maybe they could put together at some point, some type of committee outside the Legislature that can give Council a true evaluation; it's not the Legislature's attorney; not Pfeffer's attorney. Maybe AIDEA is the right person, maybe AHFC, people that do it all the time. She said right now she feels like we brought AIDEA in at the last minute and he's giving us new information that she didn't know about. She said she'd be very interested to know if AIDEA would be interested in buying the building. Making us take a vote today on information that is imperfect and incomplete would be a sad state. Like the Speaker, she's been getting beaten up right and left on this issue but she doesn't want to continue to make poor decisions and continue to get beat up. At some point, we have to try to restore public confidence in the committees that we have.

CHAIR STEVENS said that one of the problems he had as Chair was that people don't show up for the meetings. We had a meeting last time in which we went into Executive Session and we heard information on what litigation may cost. He told Representative Millett that he was sorry she missed that.

REPRESENTATIVE MILLETT said she was on the phone listening to that.

CHAIR STEVENS said then you heard the potential costs of litigation. That was in Executive Session.

REPRESENTATIVE JOHNSON directed his question to Deven Mitchell. He said we're looking at bonding for over \$100 million for capital in the next cycle and every two years after that. He said if we lost and went up three to five basis points, what the additional costs on that \$100 million a year be.

MR. MITCHELL said he would be a little reluctant to try and put a dollar figure on it. Three basis points is three

hundredths of one percent, so when you start doing larger issues, it starts adding up and it's money but it's not going to be millions and millions of dollars at the end of the day until you start doing very large deals.

CHAIR STEVENS asked Tanci Mintz to come forward to answer some questions.

TANCI MINTZ, State Leasing Facilities Manager, Department of Administration, put herself on record.

SENATE PRESIDENT MEYER, on behalf of Council and the general public, asked Ms. Mintz why we didn't do this three or four years ago when we were trying to make a decision on whether to stay in the current building or move. He said as he recalled the Atwood was not an option at that time and asked Ms. Mintz what had changed to make space in the Atwood now that wasn't available before.

MS. MINTZ said that three or four years ago is approximately when they started the new universal space standards that were put in place by the previous administration. Through that process, they were able to identify more efficiencies within the building and we had more space available. As time passed, they started working with the Legislature to offer space in the Atwood and the other process was put on pause as to who was going to be backfilling the space until a decision was made; knowing that the potential savings that the State could have in its entirety, between the Legislature and the Executive Branches, would be substantial as compared to the rate that is currently being paid to lease the current space.

SENATE PRESIDENT MEYER asked that wasn't the thought too, that two or three years ago, we could get out of some of the leases we have city-wide. By consolidating state employees into one building, there would be some cost savings there. He said he thought that was why the Legislature felt that wasn't an option because it was going to be either filled with other state employees or leased out to law firms at a higher rate. He said he thought that information was important if we're going to do additional analysis so they can determine what the opportunity costs are that we either lose or gain by moving into the Atwood Building.

MS. MINTZ said one of the points of the universal space standards was to help identify who could be brought in and provide the best value and be the best fit within the



Atwood Building. She said they had started that process and got out of some leases that naturally expired in the Bayview Building, by bringing in a couple of different agencies there. She said that process had started and then it was put on pause to wait for a decision by the Legislature. If the Legislature decides not to move into the Atwood Building, they have a list of potential agencies that would move in to backfill the vacancy to bring the cost down as compared to where they are at now.

SENATE PRESIDENT MEYER asked if that comparison had been done. If the Legislature buys the current building versus getting out of our other leases and moving various employees into the Atwood Building - has that analysis been done.

MS. MINTZ said it has not been done. She said she could only go by the square footage of what the Legislature is paying currently versus the agency that is first on the list, what they would probably be paying at their existing location.

REPRESENTATIVE JOHNSON said that he knows that there has been some discussion of litigation in Executive Session and asked if that was something that should be made public or something that should remain confidential. Does that fall under the category of potentially detrimental to the state?

CHAIR STEVENS said he is in favor of making everything public that we possibly can but the Legislature's attorney, Doug Gardner, may have other ideas. He asked Mr. Gardner to address that issue.

MR. GARDNER said it is hard to have that kind of conversation in public. He said it is fair comment on those who have touched on it, that nobody wants to get into any kind of litigation. Why would we want a court making decisions about the Legislature; he said that everything he does for the Legislature is in effort to try and avoid litigation. Litigation is expensive and the issues related to this case, if we did get into litigation regarding the non-appropriation, could be complicated. Certainly would raise issues of constitutional law; it's undesirable for the Legislature, in his opinion, to ever get into court if it can be avoided, on constitutional issues. Litigation is expensive and it is a valid cost to crank into whether or not the Legislature buys the building or moves to Atwood. He said if the Legislature goes to Atwood, a fairly large number would need to be put on litigation expense. In

response to a request for clarification by Representative Johnson, Mr. Gardner said if you want the public to have this information, it wouldn't surprise him that the Legislature could spend \$1 million to \$2 million litigating the case. He said that he thinks that the Legislature has a right constitutionally not to appropriate if you determine that we can't spend our dollars on this. He said he believes the Legislature will ultimately prevail, but it's going to cost a lot of money. Litigation is just money out of pocket, no matter what. It's not unreasonable to add \$1 million to \$2 million to this project analysis. Those numbers may be high, but by putting the numbers high, he's trying to be conservative so nobody gets a surprise. He said he would not talk about a losing scenario at this point, in response to a question by Representative Johnson, and said he wasn't trying to be cavalier with his answer.

REPRESENTATIVE JOHNSON said he didn't want to do or say anything on the record that would jeopardize anything in the future, but it was something Council needed to think about.

MR. GARDNER said he believed the Legislature's position to be superior in this regard, but he's not unwise enough to think that until it's litigated and until we see what the other person's arguments were, he's just on a pull and shoot in a vacuum.

REPRESENTATIVE MILLETT said the reason that she wanted to have this conversation out of Executive Session is because there are a lot of reporters here and this is one issue that has not been out in the press; the cost of litigation and breaking the lease. We hear a lot about how much the building costs, how much it costs to buy, how much it costs to lease, but we don't hear the other side of the story and what's at risk for the State, the bond rating, litigation. Speaking to Mr. Gardner, she said he was optimistic in that he thinks that the Legislature would win but we've seen in the past in the '80s, we lost and had to pay the full price. She said she wants the full story to be out there because we've been demonized an awful lot about this building but we also have to make very, very wise decisions in the future especially because of the fiscal situation. She said she just wants accurate information out there so the public understands the gravity of the situation. It's not just a move to the Atwood Building, there's much more moving parts. It could be a very expensive option, it's not just this cheap idea of spending \$1.00 per square foot at the Atwood Building, it's much more involved. It's been

very simplified in the press and with the public. She said she wanted to emphasize that there's much more at risk than just taking a cheaper lease. She appreciates the Chair's commitment to being as transparent as possible because that's the way they keep their constituents informed. Legislators are obligated not to talk about what is discussed in Executive Session.

SENATOR MICCICHE said it's difficult to quantify the potential liability. We've heard about a couple of instances where we've exercised that option to not appropriate. He said he only knows of one that's been sort of concrete and we lost it. What he doesn't know if they were rewarded the remainder of the term or if they were rewarded a year of the lease fees.

CHAIR STEVENS interrupted to say he wasn't sure we lost the case, it was settled out of court.

MR. GARDNER said there was litigation surrounding a non-appropriation scenario regarding the Behrend's Building in Juneau. He said that case was not particularly relevant or helpful to this, and said he didn't think he had ever provided the Senator with the briefing, so he wouldn't know that. It was a non-appropriation that happened in the last year of the lease. The way that the appropriation bill was drafted was a bit murky, it left arguments that probably wouldn't exist in this situation. He said Senator Micciche was right, the Legislature did pay what he believes was the very last year of the lease, we paid out the last piece of the lease in some settlement. He said it is a case worth noting and the answer is there are risks involved if the Legislature non-appropriates; there are also ways to protect the Legislature.

SENATOR MICCICHE said his point was making an assumption of cost that could be applied to the value of whether the Legislature moves or not. So, we think that there's a between \$1 million and \$2 million in legal fees alone, potentially if we were to not be successful. If we're not successful, there's likely some settlement and he's not sure what number to use. If we use a year, because that's the only model, even if it's not apples-to-apples, it's a \$6 million settlement. He's applying a number in his mind, he doesn't like risk and wants to protect the people of Alaska as much as possible, and if you apply that number, it reduces the value of moving on a square footage basis.

CHAIR STEVENS reminded Council that we're discussing a lot of things that were discussed in a confidential session, but to clarify, the range we heard was \$200,000 to \$2 million was the range of litigation.

MR. GARDNER said that it was possible to spend \$30,000 per month for two years and he came up with a number of about \$1.7 million and he added another \$250,000 on to that as a cushion and as a cost for some experts which could be very expensive in a case like this. Directing this comment to Senator Micciche, he said that we have not ever tried to bake those numbers into any of the project costs because he didn't think that was traditionally done with project costs, but he didn't think it was unreasonable and was glad the Senator had brought it up. It is not unreasonable for the Legislature to be looking at a litigation scenario and how negative that could be, both from a fiscal standpoint and from a legal standpoint.

SENATOR COGHILL said the way he had to consider this was like many others. When we made a lease, was the non-appropriation clause an option to exit or was it a safety valve based on, for example, the fiscal time we are in, which is catastrophic. If it's not an option similar to an option to purchase, then exercising it seems like one of the last resorts we'd want to do. The economics of the Atwood Building make it very, very attractive, but generally speaking, a deal is a deal and he'd like to stick with that deal as much as possible. If there is some willingness to go back and negotiate and re-negotiate the cost of the current building or if there are any offers that will come this way, before he'd be willing to use the non-appropriation clause that is legal, that it may not be the wisest thing to do. He said that's where the balance of his struggle was. He said he tries to listen to the Legislators from the Anchorage area the most because they're the ones who will be impacted the most. For him, the temptation to move to the Atwood Building is huge with a couple of exceptions. He does not have a comfort level with the non-appropriation clause that it's an option that should be exercised until we absolutely have no other option. The Legislature is probably not going to go away any time in the near future unless the whole government collapses. He said he thinks the Legislature should have a house that people can go to that is the Legislature; and the identity of the Atwood Building could be made that way, but it is not that way right now, as the current LIO is. So, there's the legal and political ramifications that he struggles with; that he can tell you that \$5 per square

foot or somewhere in that neighborhood sure makes it attractive to move on. He said it may be AIDEA may have some ways to help us navigate through financing but he didn't hear anything in the numbers that would help us get there. In any case, a 30 year loan doesn't seem to get anywhere close to the Atwood Building. So, then it's just a matter of the cost of breaking the lease, which is both a bond and legal, and then the value to the Legislature to have a separate place along the way. He said he has tried to weigh that as much as he can. He said listening to the legal discussion on the non-appropriation clause, it doesn't look like it's as much of an option as it is a last resort exit clause. He said he would probably like to see us head in the direction of getting better numbers to see if we can buy the building and land; and make a little progress on the value of this building. He said he wanted to let people know that he had been listening and really struggling between our legal responsibility and the poor budgeting that we've found ourselves in.

CHAIR STEVENS said that if Council is amenable, it would be best to take a 15 minute break to let the House and Senate members talk to each other and see if there's any reason to carry on this meeting. Council will take a brief 15 minute break and return at 12:45pm.

12:28:05 PM Legislative Council took an "at ease."

NOTE: Vice Chair Herron left the meeting prior to the "at ease."

1:32:25 PM Legislative Council returned from the "at ease."

CHAIR STEVENS brought the meeting back to order.

SENATOR MICCICHE moved that Legislative Council advises the Legislature not to appropriate for the 716 W Fourth Avenue lease pending the outcome of the currently pending legislation or unless negotiations between counsel for the Legislature and a State entity within the next 30 days result in a competitive cost on a per square foot of usable space basis.

SPEAKER CHENAULT clarified to ask if Senator Micciche had used the word "litigation" or "legislation."

SENATOR MICCICHE restated the motion. He moved that Legislative Council advises the Legislature not to appropriate for the 716 W Fourth Avenue lease pending the

outcome of the currently pending litigation or unless negotiations between counsel for the Legislature and a State entity within the next 30 days result in a competitive cost on a per square foot of usable space basis.

CHAIR STEVENS said we are expecting some serious negotiations. We expect to have our attorney Serena Carlsen involved in this and a State agency in the hopes of winding up with a contract that we can agree to on this building.

SENATE PRESIDENT MEYER asked Doug Gardner if he had any comments or thoughts on the motion made by Senator Micciche. He said was it a legitimate motion or one that was going to get us in trouble if we vote one way or another.

MR. GARDNER said he didn't think the motion was going to get Council members into any trouble. He said during the stating and restating of the motion, he spoke briefly with Mr. Davis from AIDEA and he was concerned about the 30 day timeline, especially with the upcoming holidays, to the extent that he's an entity that might work on this. Mr. Davis respectfully was hoping he might get 45 days and authorized Mr. Gardner to mention that. He said he did not think there was a problem with the motion. As he understood Chair Stevens' comment, the idea was that within that period of time, however, that period of time was defined - 30 or 45 days - the Council's expectation was that Stoel Rives' Serena Carlsen and others would work with the owners to try to bring back a proposal that Council can evaluate and he thought that could be done.

CHAIR STEVENS said Council is under the gun to a certain extent in that they have asked for some time Tanci Mintz and the Department of Administration to not lease the space to others in the Atwood Building and we want to make sure that we don't dawdle too long, as has happened in past years, to the point that we lose that as an opportunity. Ms. Mintz said 30 days was acceptable and he thought more would be problematic with the Department of Administration. At this point, he would like to stick with the 30 days and ensure progress is being made. It was possible that if progress is being made, we can work with the Department to try and get that extended; but he thought a 30 day period was pretty crucial so we don't lose that facility.

MR. GARDNER said that as counsel for the Legislature and in working with Stoel Rives, they'd do everything they can to

provide all the documents to whatever entity is trying to price this for Council.

SENATOR MACKINNON asked if Ms. Mintz could come forward to ask about the 45 days. One of the reasons that she believed she would be supporting the motion that is before Council is so that there can be an opportunity for some additional price comparison on that square footage or the overall investment opportunity or challenge that the State faces.

MS. MINTZ again put herself on the record again as the State Leasing Facilities Manager for the Department of Administration. In response to the question from Senator MacKinnon about the possibility of extending the timeline to 45 days, because of the Christmas and New Year's holidays making it difficult to get the work done by the 30 day timeline, Ms. Mintz said she believed 45 days would be acceptable.

SENATOR MACKINNON asked Senator Micciche to consider a friendly amendment changing the timeline from 30 to 45 days to ensure Council can get the results that we want.

SENATE PRESIDENT MEYER said that since Council's vote is only advisory, the ultimate decision is still going to be done during session in Juneau. He asked Senator Micciche to withdraw his original motion and bring forward a new motion with the 45 days.

SENATOR MICCICHE withdrew his original motion.

1:40:53 PM

SENATOR MICCICHE moved that Legislative Council advises the Legislature not to appropriate for the 716 W Fourth Avenue lease pending the outcome of the currently pending litigation or unless negotiations between counsel for the Legislature and a State entity within the next 45 days result in a competitive cost on a per square foot of usable space basis.

CHAIR STEVENS, in response to a request by Representative Neuman for clarification of the motion, said the motion was to not appropriate, to await the litigation that is now in place; to negotiate a price with a State agency and Mr. Pfeffer; and to give 45 days to do that. He explained further that if, after the 45 day time period, there was no agreement, then Council would recommend to the Legislature that the funds not be appropriated for the lease.

SENATOR MICCICHE said that clearly the people of Alaska are paying attention to this issue and we owe it to them to operate at the lowest cost possible. He said the Legislature is moving, unless the pending litigation results in a null and void lease or negotiations result in a cost that competes with other space that we are currently leasing. That way, we would be operating here at the lowest cost. If that doesn't happen, our recommendation is that we simply move on.

CHAIR STEVENS asked for a roll call on the motion and repeated that a "yes" vote would be a non-appropriation, wait for litigation 45 days, and negotiate a price.

A roll call vote was taken.

YEAS: Stevens, Meyer, Coghill, Huggins, MacKinnon,  
Micciche, Chenault, Johnson, Kito, Millett, Neuman,  
Herron

NAYS: None

The motion passed 12-0.

NOTE: Representative Herron participated in the roll call vote via teleconference.

There being no further business before the committee, the Legislative Council meeting was adjourned at 1:45 p.m.

1:45:09 PM



## Walker says he'd veto Anchorage LIO purchase

Posted: April 15, 2016 - 12:36pm | Updated: April 17, 2016 - 12:00am

By Becky Bohrer

THE ASSOCIATED PRESS

**JUNEAU** — Gov. Bill Walker said Thursday that he would veto the purchase of a legislative office building in Anchorage if that item remains in the state infrastructure budget.

Walker told The Associated Press the purchase is not compatible with where the state is financially right now. He said legislators should know where he stands on the issue as they put the budget together.

The current Senate version of the capital budget includes \$32.5 million for the building and land purchase of the Anchorage legislative information office. The debate over buying the building comes after a state court judge last month ruled that the Legislature's lease of the building violated state contracting rules and should be tossed out.

Alaska faces an estimated \$4 billion budget deficit exacerbated by low oil prices.

"I think that when we're not able to fund many, many, many things, asking people to do things differently, pay taxes, lower dividends, those kinds of things, I think to acquire that building for legislative offices when we have vacant space available in our own buildings, which we already own, I think is not fiscally responsible," he said.

Senate Finance Committee co-chair Anna MacKinnon, who takes the lead on the capital budget on the Senate side, said she went to Walker before introducing her draft rewrite of the bill to ask him his thoughts. The governor told her he needed to consider it, she said.

MacKinnon, R-Eagle River, said she never heard from him directly that he had made a decision. "I'll find out why later," she told reporters when asked for reaction to Walker's decision, adding later: "Maybe I have a memo in my inbox."

Walker's legislative director informed MacKinnon's chief of staff of the governor's decision after Walker disclosed it when asked during the AP interview.

The choice to advance for consideration the purchase of the building was made because it was the least costly way to close out a lawsuit that is a potential liability for the state, among other reasons, MacKinnon said. The state Atwood building would not be immediately ready for the Legislature to move there, which would require renting space somewhere else in the meantime, she said.

"I think the governor has acted in a way that is inconsistent with the best financial choices for the Legislature," she said.

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Legislature to stay put  
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**From:** Mark Pfeffer  
**Sent:** Saturday, July 13, 2013 10:01 AM  
**To:** Mike Hawker  
**Subject:** Fwd: conversation with Gardner / Attorney client conversation

Before I called you the other day Steiner told me to tell you that he is keenly aware that Rep. Hawker starts with "I hate lawyers".

So at least he is sensitized sentiment.

Anyway see the attached internal memo.

I think Gardner is just flat out wrong.

A) you can extend as is where is.

B) you voted to allow major modifications

C) you can commit previously appropriated funds for the purpose of new and or improved facilities.

D) if the full legislature decides to move forward by approving the lease (and the governor signs off) what more do you need?

I think Gardner has "A" way to keep going but he needs to be brought along other ways.

Anyway, don't stress out over this we'll get there. I think we plan an all hands meeting Monday the 22nd and we don't leave the table until we have agreement on direction.

Lastly, Juli seemed to be fully on board with the direction we discussed. The new schedule worked for her better than the October start.

I'm around if you want to discuss.

Mark Pfeffer  
Sent from my iPhone  
907-317-5030

Begin forwarded message:

**From:** "John L. Steiner" <[JSteiner@PfefferDevelopment.com](mailto:JSteiner@PfefferDevelopment.com)>  
**Date:** July 13, 2013, 8:44:59 AM AKDT  
**To:** "Donald W. McClintock" <[dwm@anchorlaw.com](mailto:dwm@anchorlaw.com)>, Mark Pfeffer <[MPfeffer@PfefferDevelopment.com](mailto:MPfeffer@PfefferDevelopment.com)>, 'bob acree' <[bobacree@gmail.com](mailto:bobacree@gmail.com)>  
**Subject:** RE: conversation with Gardner / Attorney client conversation

I concur with Don's summary, but will expand on it.

Gardner said he liked the .083 rationale because that section begins "Notwithstanding any other provision of this chapter" which he felt offers complete legal justification and protection. But that

assumes—as he has assumed—that the long-term enlarged and renovated LIO would have to come in at 10% below a BOV for that facility and be limited to 10 years. We explained that the long term deal was not conceived with those expectations, which we believe was fully understood by Rep. Hawker. Gardner seemed to think some of the legislative council members voted in reliance on exactly the contrary understanding: that the renovated space would satisfy those parameters.

Gardner has always tended to focus on procurement issues, and specifically raised that again: he said that if we are falling under .080 and not .083, he did not see why that would not need to be selected through an RFP. I responded that the Procurement Code makes this real estate interest transaction exempt from all procurement rules other than .080, and that so long as it complies with that section's legislative approval requirement, no other process is required. He did not concede that point, but offered no reason it was not so. We did not discuss the fact that this transaction was approved by the legislative council as an outgrowth of the its conclusion based on the prior RFI that other feasible and timely alternatives were not available.

Reading between the lines, it seems he likes the .083 rationale also because he assumes competition is ordinarily required, and that it is only the 10% below market standard that provides justification for not competing. He thinks *that* would need to be true for the expanded and renovated space, and if it *were* to be true for the finished project, that should also bring the non-competitive expansion and renovation under the protection of .083 (even though that section addresses only extension, not enlargement—a factor we did not discuss with him yesterday).

He also said he did not see the justification for extending the existing space for ten years AS IS under .083 since it was not contemplated that they would remain in it AS IS. He implied that he thought it was—or would be seen to be—disingenuous to extend based on a 10% below market AS IS justification, when it was not the plan to actually continue that AS IS deal. I responded that indeed they would continue to enjoy that deal—for ten years—if they elect not to approve the renovation modification. It would only be if they conclude the renovation deal is better, and approve that one independently under .080, that the extension would not continue AS IS under .083.

Overall, the deal is not as he had understood it or thought it should be, so he is at least very skeptical and initially resistant to the differences.

I should note that while he was clearly not happy with the plan as we laid it out, he remained cordial with us and said he would read the drafts and continue to think about it. And while he was concerned about how other legislators would view it, he said he was also not keen to get crosswise with Rep. Hawker, with whom he said he was not in regular touch right now due to Rep. Hawker being out of state for personal reasons.

If Gardner continues to believe there is a procurement issue, it may be useful to carve out the procurement portion of my internal analysis, and provide that to him.

Don, please let us know if you disagree with my recollections in any way. Thanks.

***John L. Steiner***

Project Director and Counsel

---

**Pfeffer Development, LLC**

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d 907.770.4306 | c 907.382.2300

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**From:** Donald W. McClintock [<mailto:dwm@anchorlaw.com>]  
**Sent:** Friday, July 12, 2013 5:22 PM  
**To:** Mark Pfeffer; 'bob acree'  
**Cc:** John L. Steiner  
**Subject:** conversation with Gardner / Attorney client conversation

All,

The initial conversation with Gardner was a little rocky. Although his earlier tone a few weeks ago seemed to be more interested in addressing solutions to the contracting issues, today he was quite dug in with his theory that the motions contemplate a final contract that is 10% below FMV and a deal that can entirely be justified by section 083. He seems to have blown right past his concerns shared a few weeks ago about how to do a material modification under section 083 and discounted the value of a section 080 approval by the legislature. I think John and I fundamentally are not confident that the entire deal can be done under section 083 with the material modification as well. Plus the 10 year term limit is a problem.

He also was not receptive to the reimbursement concept.

We explained that we understood both the motion structure (which he now discounted as not being meaningful or a real justification for how we structured the deal) and the business deal was to allow a FMV deal approved by AHFC. He stated that he had other clients in the Legislature other than Hawker who will be very concerned about not getting a 10% below FMV deal. Hawker is out for a week and he clearly will not budge until after he speaks with him.

We did leave it that next week can be spent ironing out boilerplate, etc., but the big issues will go on hold on his side until after Hawker returns.

John can chip in when he gets access to a computer.

Don

**Donald W. McClintock**  
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**Juli Lucky**

---

**From:** John L. Steiner <JSteiner@PfefferDevelopment.com>  
**Sent:** Thursday, July 18, 2013 12:03 PM  
**To:** LAA Legal  
**Cc:** 'bob acree'; Mark Pfeffer; Heidi A. Wyckoff; Donald W. McClintock  
**Subject:** RE: LAA leases  
**Attachments:** LIO Project Procurement Analysis dated 7-13-2013.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Doug,

Based on your concern as to any possible procurement implications of our transactional plan for the Anchorage LIO lease amendments, I prepared a memo with my analysis of that issue. I have been authorized to release it to you, as we thought it might be helpful to you, as well.

I look forward to talking through whatever issues may yet need to be resolved.

**John L. Steiner**

**Project Director and Counsel**

---

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**From:** Donald W. McClintock [mailto:dwm@anchorlaw.com]  
**Sent:** Friday, July 12, 2013 12:53 PM  
**To:** LAA Legal  
**Cc:** 'bob acree'; Mark Pfeffer; John L. Steiner; Heidi A. Wyckoff  
**Subject:** LAA leases

Doug,

Per our conversation today, please find attached draft leases for 716 W. 4<sup>th</sup> extension and the material amendment to add 712 W. 4<sup>th</sup> and renovate.

I also attach the analysis on how the extension rent was set under the BOV delivered to Representative Hawker.

As noted, there are business issues that you need to confirm with your clients, but we also stand by to address the various boilerplate clauses. Note, we tried to anticipate from your existing lease structure some of the clauses you would expect to see and obviously are receptive to adding others we may have missed. A lot of the technical detail that are in your leases will be in the plans and specifications in this deal, which we will both have to see once the AHFC and architectural process is complete.

I look forward to working these through with you. Enjoy the weekend; we are enjoying a blue bird summer day in Anchorage.

Don

**Donald W. McClintock**

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## **Legislative Information Office Project Procurement Analysis**

John Steiner, Project Director and Counsel

July 13, 2013

### **Executive Summary**

I do not believe the proposed Anchorage Legislative Information Office (LIO) lease extension and potential project plan is subject to any reasonable issue as to its compliance with applicable procurement rules. Indeed, I believe the proposed plan to be the most legally defensible manner in which to implement the intent of the Legislative Council.

### **Outline of Lease Extension and Potential Project Plan**

The plan is to first execute a ten-year extension of the existing lease for the existing leased space in its existing condition at a rate not more than 90% of market value as shown in a broker's opinion of value or appraisal. This extension would secure ongoing space after May 31, 2014 at a price statutorily deemed fair, but without committing the legislature to any major enlargement or cost increase.

Next, a material amendment to the extended lease (in the form of a restated lease document) will provide for enlargement, renovation and lease rate adjustment, but rather than the Legislative Council chair assuming that he and the Legislative Council possess the authority for that scope of change, it will be made expressly subject to legislative approval under AS 36.30.080.

Reflecting the Legislative Council chairman's confidence that the legislature will, indeed, approve the proposed enlargement and renovation, and to allow planning and design to proceed so work can be accomplished while the legislature is in Juneau for the up-coming legislative session, an independently and immediately valid provision of the lease restatement will authorize such planning and design to proceed pending legislative approval, with a lump sum cost approved by AHFC to be payable from funds previously appropriated for Legislative Council use.

### **Analysis of Legislative Council Authorization**

The first step of the plan is to implement the lease extension authorized by the first motion at the June 7, 2013 meeting of the Legislative Council:

MOTION – LEASE EXTENSION: I move that Legislative Council authorize the chairman to negotiate all the terms and conditions necessary to extend Lease 2004-024411-0 pursuant to AS 36.30.083(a).

AS 36.30.083(a) provides in relevant part:

(a) Notwithstanding any other provision of this chapter, . . . the legislative council . . . may extend a real property lease that is entered into under this chapter for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value.

The motion set out above authorizes exactly what AS 36.30.083(a) appears to contemplate: an extension of up to ten years of the existing lease for the existing leased space in its existing condition at a rate not more than 90% of market value as shown in a broker's opinion of value or appraisal. Nothing in the motion, or for that matter in AS 36.30.083(a), suggests an expectation, contemplation, or even authority for the Legislative Council to double the area leased or total lease cost immediately before or in conjunction with an extension under that statute. Accordingly, the "as-is" extension will comply precisely with the Legislative Council and statutory authorizations.

The second step of the plan is to conditionally execute the lease modification authorized by the third motion at the June 7, 2013 meeting of the Legislative Council:

MOTION – AUTHORIZE MATERIAL AMENDMENTS TO LEASE: I move that Legislative Council authorize the chairman to negotiate amendments to lease 2004-024411-0 by mutual agreement with the Lessor to remove the limitation of amending a lease that amounts to a material modification in paragraph 42; and to include 712 West Fourth Avenue, with other terms and conditions necessary to accommodate renovations, not to exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation.

The restated lease document will accomplish everything authorized in the above motion. Although the Legislative Council gave broad authority to its chairman in this motion, the scope of proposed changes is so great that it seems imprudent to assume that the Legislative Council itself has the authority to authorize the modification without full legislative approval under AS 36.30.080.

That the plan is consistent with the actions taken by the Legislative Council is supported by the requirement that the renovations "not . . . exceed the estimated cost of a similarly sized, located and apportioned newly constructed building as determined by the Alaska Housing Finance Corporation." Not only does this language provide a test of reasonable cost for the renovations independent of the 90% of market value standard under AS 36.30.083(a), but if the latter standard were meant to apply to the lease rate for the renovated space, there would be no reason to include a renovation cost limit at all.



## Procurement Analysis

The Legislative Council is not subject to any requirement for competitive lease procurement except to the extent it has imposed the restriction on itself. As such, the Legislative Council's change to its Procurement Procedures should be effective in opting to allow noncompetitive modification of a lease.

Under AS 36.30.850(5), the Alaska Procurement Code does not apply to "acquisitions or disposals of real property or interest in real property, except as provided in AS 36.30.080 and 36.30.085." (emphasis added). One may question whether a lease is an exempted interest in real property, but analysis of the Procurement Code eliminates all doubt. A lease is clearly an interest in real property, exempt from the Procurement Code except as stated in AS 36.30.850(5).

AS 36.30.080 and AS 36.30.085 deal *expressly* with leasing. Although the latter includes possible acquisition of title, the former does not. The logical and necessary import of inclusion of an *exception* for AS 36.30.080 in the general exclusion for "acquisitions or disposals of real property or interest in real property," is that the leasing activity covered by AS 36.30.080 *is* acquisition of an interest in real property.

Importantly, however, the exception under AS 36.30.850(5) does not state that Legislative Council leasing is generally subject to *all* provisions of the Procurement Code; rather Legislative Council enjoys the same exclusion for leasing as for any other acquisition of an interest in real property "except as provided in AS 36.30.080 and AS 36.30.085" (emphasis added). So only the specific requirements of those statutes apply.

AS 36.30.080(a) makes some leasing—by the Department of Administration for "the state or an agency"—"subject to compliance with the [competitive procurement] requirements of [the Procurement Code]." But the Legislative Council is not "the state or an agency" for which the Department of Administration leases space. Rather, under AS 36.30.990(1) "agency" "means a department, institution, board, commission, division, authority, public corporation, the Alaska Pioneers' Home, the Alaska Veterans' Home, or other administrative unit of the executive branch of state government." (emphasis added).

Clearly, neither the Legislature nor the Legislative Council is an administrative unit of the executive branch. The Legislative Council leases space for the Legislature under AS 36.30.080(c).

So although it is true that leasing space for state agency use generally falls subject to competition under the Procurement Code, that is not the case for leasing by the Legislative Council.

AS 36.30.080(c) applies to the Legislative Council, but it does *not* reincorporate the Procurement Code. Rather, it requires notice to the legislature, and legislative approval (which

may be satisfied by appropriation of the first year's rent) if the annual rent is expected to "exceed \$500,000, or with total lease payments that exceed \$2,500,000 for the full term of the lease, including any renewal options that are defined in the lease." It further expressly states that

"the legislative council . . . may not enter into or renew a lease of real property

(1) requiring notice under this subsection unless the proposed lease or renewal of a lease has been approved by the legislature by law; an appropriation for the rent payable during the initial period of the lease or the initial period of lease renewal constitutes approval of the proposed lease or renewal of a lease for purposes of this paragraph;

(2) under this subsection if the total of all optional renewal periods provided for in the lease exceeds the original term of the lease exclusive of the total period of all renewal options."

Thus, AS 36.30.080(c) does not re-inject a competition requirement for legislative leasing. The statutory expectation is legislative approval, not competition. The general principal is that just as no appropriation, direct legislative grant or other legislative action is required to be based upon a formal competitive process, the legislature is free to act on its own leasing by law without any other procurement process.

The reimbursement of planning and design work may appropriately be covered as a term of an exempt lease, as a material modification under Alaska Legislative Procurement Procedures Section 040(a) or (d), inasmuch as the Lessor is making that material modification of the lease a requirement to submit the larger modification (that includes a schedule for proposed renovations requiring the planning and design to proceed) for legislative approval.

#### **Limits of AS 36.30.083(a) Authority**

It is worth a brief additional note as to the risk of seeking to avoid legislative approval under AS 36.30.083(a) based on a renovated lease rate 10% below market rent, even if that were feasible as a business matter because of the enforced 10 year term. For the Legislative Council to attempt to accomplish redevelopment and an associated change in rent (increasing both the space leased and the rent per square foot) under AS 36.30.083(a) would seem much more likely to be seen as an end-run around the statutory requirement for full legislative approval. The current proposal as mapped by the Legislative Council motions to extend "as-is" and explicitly present the restated lease for legislative approval addresses the requirements of the Code more directly. That way there can be no allegation that the amendment is beyond merely "material" but so changes the amount and nature of the space leased that for purposes of legislative approval it should be treated as a new and different lease and not just a lease extension allowable under AS 36.30.083(a).

## **Alaska Legislative Procurement Procedures**

One might inquire as to the implications of Alaska Legislative Procurement Procedures Section 033 (LIMITED COMPETITION PROCUREMENTS), which addresses procurement of “supplies” not exceeding \$50,000, and expressly “includes a space lease” for no more than \$50,000 or for no more than 3,000 square feet. The inclusion of leased space within the definition of “supplies” may derive from the Procurement Code’s definition of “supplies” under AS 36.30.990(24), to include “privately owned real property leased for the use of agencies, such as office space, but does not include the acquisition or disposition of other interests in land” (emphasis added). As previously noted, because the legislature is not an “agency,” its leases do not fall within the statutory definition of “supplies.” Hence the Legislative Procurement Procedure that seems to consider a small lease a “supply” is not compelled by statute.

Similarly, the new material amendment language of Section 040(d) addresses lease extension in the context of a Procurement Procedure Section regarding exemption from standard procurement by formal solicitation and low bid. Thus, even though legislative leasing appears to be exempt from the Procurement Code as a matter of statute, the Legislative Council has arguably committed to competition in most cases under its own procedures.

But the new material amendment provision under Section 040(d) of the Legislative Procurement Procedures lifts whatever self-imposed issue there may be relating to competition under those Procedures. And the Legislative Council imposed no limitation on the terms that can be modified under Section 040(d) given legitimate findings by the chair of the Council. All that remains is any legislative approval that may be required by AS 36.30.080. Our plan calls for precisely such approval.

## **Supplement to Legislative Information Office Project Procurement Analysis**

John Steiner, Project Director and Counsel

July 24, 2013

### **Executive Summary**

To whatever extent there is concern that the Alaska Legislative Procurement Procedures and historic practice impose competitive procurement principles on the Legislative Council's selection of leased office space, there appears, nevertheless, to be ample basis on the record for a written sole source determination under Alaska Legislative Procurement Procedures Section 040(a). Such a determination would support complete exemption from further competitive procurement and allow lease extension, expansion and renovation without need to rely on—or comply with—AS 36.30.083 for the enlarged and renovated space, and subject only to legislative approval of the modified lease under AS 36.30.080(c).

### **Analysis**

When I prepared my July 13, 2013 analysis, I was not aware of the May 14, 2013 "REQUEST FOR INFORMATION (RFI) - ANCHORAGE PROFESSIONAL OFFICE SPACE" issued by the Legislative Affairs Agency at the direction of the Legislative Council and requesting information about space in Anchorage meeting desired requirements for a legislative information office for occupancy May 1, 2014 (copy attached).

Neither was I aware that at the June 7, 2013 Legislative Council meeting, apparently after review of whatever RFI responses that the Legislative Affairs Agency had received—such responses having been due by May 24, 2013—the Chairman, being also the procurement officer for the Legislative Council under Alaska Legislative Procurement Procedures Section 900(4)(E), stated the following on the record:

"Would note for the record that we have previously researched—looked for properties in downtown Anchorage that would be suitable to legislative functions, and, quite frankly, there are none."

and

"Pursuing the sole source option within Alaska statute was deemed at this time to be the most practicable method forward as the lease is absolutely totally and completely expired on this building in eleven months, we have no home to turn to . . ."

Those observations on the record, if reduced to a written determination, come very close to and appear to fully support, a sole source justification under Alaska Legislative Procurement Procedures Section 040(a), which roughly corresponds to the sole source procurement provision at AS 36.30.300, and provides in pertinent part as follows:

Sec. 040 EXEMPTIONS. (a) A contract is exempt from the solicitation requirements of sec. 030 and from sec. 145, if

(1) the procurement officer determines in writing that

(A) it is not practicable to award a contract by competitive sealed bidding, competitive sealed proposals, or other competitive method; and

(B) award of the contract under this paragraph is in the agency's . . . best interest;

It appears, therefore, that the only step lacking to perfect the exemption from competitive procurement in this instance is for the chairman of the Legislative Council, being the relevant procurement officer, to prepare a written determination in compliance with Alaska Legislative Procurement Procedures Section 040(a). Given the May 2013 RFI, and based on the determinations already stated on the record thereafter at the June 7, 2013 Legislative Council meeting and the unanimously passed motions based on those determinations, preparation of such a written determination would seem to be a mere formality to document circumstances already well-acknowledged.

Exemption from competitive procurement based on a written determination under Alaska Legislative Procurement Procedures Section 040(a) would eliminate any concern about compliance with the competitive solicitation under past practice and the Alaska Legislative Procurement Procedures. That exemption would, thus, also eliminate any need to accomplish the proposed enlargement and renovation of the existing space under AS 36.30.083 in order to justify not issuing a new competitive solicitation. Accordingly, the ten-year "as-is" extension under AS 36.30.083, followed by enlargement and renovation conditioned upon legislative approval under AS 36.30.080(c), could proceed precisely as contemplated in the Legislative Council's unanimous June 7, 2013 motions without concern about a challenge based on failure to pursue competitive procurement.

**In the Matter Of:**

**ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC**

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**JAMES GOTTSTEIN - VOLUME I**

*October 16, 2015*

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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3

4 ALASKA BUILDING, INC., an  
5 Alaska corporation,

6

Plaintiff,

7

vs.

**CERTIFIED  
TRANSCRIPT**

8

716 WEST FOURTH AVENUE LLC,  
and LEGISLATIVE AFFAIRS  
AGENCY,

9

Defendants.

10

Case No. 3AN-15-05969 CI

11

12

DEPOSITION OF JAMES B. GOTTSTEIN

13

VOLUME I

14

15

Pages 1 - 58, inclusive

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Friday, October 16, 2015  
2:00 P.M.

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Taken by Counsel for  
Defendant 716 West Fourth Avenue LLC  
at  
ASHBURN & MASON  
1227 West 9th Avenue, Suite 200  
Anchorage, Alaska

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1 A-P-P-E-A-R-A-N-C-E-S

2

For Plaintiff:

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Court Reporter:

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1	I-N-D-E-X	
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7	Exh I Request for Information (RFI) Anchorage Professional Office Space (3 pages)	6
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1                   ANCHORAGE, ALASKA; FRIDAY, OCTOBER 16, 2015

2   2:03 P.M.

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4                                   JAMES B. GOTTSTEIN,

5                   deponent herein, being sworn on oath,

6                   was examined and testified as follows:

7                                   EXAMINATION

8   BY MR. CUDDY:

9           Q.    Good afternoon, Mr. Gottstein. We've met  
10   before, but my name is Kevin Cuddy. For the record,  
11   I'm here on behalf of the Legislative Affairs  
12   Agency. I'll be asking you a few questions today,  
13   and I know Mr. Robinson will as well.

14                   Have you ever been deposed before?

15           A.   I don't remember, really. I've been in  
16   depositions.

17           Q.    Okay. Have you ever given testimony?

18           A.    Yes.

19           Q.    And how many times?

20           A.    I don't know. Half a dozen, maybe.

21           Q.    Okay. And can you describe the  
22   circumstances of those, to the best of your  
23   recollection?

24           A.    Well, the two that come to mind are in a  
25   civil commitment case. I testified for a

1     respondent. I testified for my now-wife's -- she  
2     had a hearing for a modification, support  
3     modification. I testified at a hearing in my  
4     divorce. It was a preliminary hearing. Probably  
5     some more. I don't -- don't recall.

6           Q.     Okay. Along the same lines as what you  
7     have just described or any other civil litigation  
8     that's closer to the type that we're dealing with  
9     today?

10          A.     Not -- none --

11          Q.     Okay.

12          A.     -- like that we're doing.

13          Q.     All right. Since I know that you've been  
14     involved in depositions before, I'm not going to go  
15     through all of the details about sort of the ground  
16     rules that might ordinarily apply, but I do want to  
17     just state a few for the record, probably the  
18     principal one being we want to make sure that we  
19     understand one another. So I will do my best to  
20     wait until you have finished your answer before I  
21     start my next question. And if I could ask you to  
22     wait until I finish my question before you start  
23     your answer, it will make Gary's life a lot easier.  
24     Okay?

25          A.     Sure.

1 Q. Great. And if you could also make sure  
2 that you give audible responses to any of the  
3 questions so that it comes through on the record,  
4 that would be helpful. Okay?

5 A. Uh-huh.

6 Q. And we'll try to avoid the uh-huhs and  
7 huh-uhs, if we can. Okay?

8 A. The record will show that I winked.

9 MR. ROBINSON: With your left eye.

10 BY MR. CUDDY:

11 Q. Okay. All right. So you have been put  
12 under oath, and so it's very important, obviously,  
13 that you tell the truth in all of your testimony  
14 today. Do you understand that?

15 A. Sure.

16 Q. All right. I'm going to mark as our first  
17 exhibit -- and there are a number of other exhibits  
18 that will be coming in later today, in earlier  
19 letters. I'm going to mark my first one as  
20 Exhibit I.

21 (Exhibit I marked.)

22 BY MR. CUDDY:

23 Q. Have you ever seen this document before,  
24 Mr. Gottstein?

25 A. I believe so.

1 Q. And can you describe what it is for the  
2 record?

3 A. It's a request for information dated  
4 May 14, 2013.

5 Q. And is this with respect to the Legislative  
6 Information Office building renovation or new lease?

7 A. Yes.

8 Q. Mr. Gottstein, I should have addressed this  
9 at the beginning. You are here on behalf of the  
10 plaintiff in this case, Alaska Building, Inc.?

11 A. I'm the president of Alaska Building, Inc.

12 Q. Okay. And you're testifying in that  
13 capacity today?

14 A. Yes.

15 Q. Okay. Did you provide any response to this  
16 request for information when it was issued?

17 A. I don't believe I saw it until sometime  
18 after the -- the new lease was announced in mid to  
19 late September 2013.

20 Q. All right. So then I take it you did not  
21 respond to the RFI when it was originally issued?

22 A. Correct.

23 Q. Do you know how many, if any, entities did  
24 respond?

25 A. Well, I understand that a number of people

1 thought it was a sham and didn't respond, but I  
2 understand that there were two that did.

3 Q. And who were they?

4 A. I don't recall. I'm trying to visualize --  
5 you know, I -- a lot of this is from discovery that  
6 you provided, so going through that discovery, I saw  
7 that there were two. One was something Seasons, I  
8 think. I don't know if it was Four Seasons. I  
9 don't know. There were two, I think.

10 Q. And as to these two, do you know whether --

11 A. Oh, Carr Gottstein Properties was one, I  
12 think.

13 Q. Okay. Do you know whether either of the  
14 two proposals that you --

15 A. So there might have been three.

16 Q. -- mentioned were responsive?

17 A. No, I don't really know.

18 Q. You don't know one way or the other?

19 A. No.

20 Q. Okay. Do you know what rent either of  
21 those entities were offering for the space?

22 A. Something under three dollars a square foot  
23 is my recollection. Somewhere 2.75 to three  
24 dollars, I think, maybe even 2.50.

25 Q. And what's the basis for that

1 understanding?

2 A. The discovery that you provided.

3 Q. Do you know whether there are any entities  
4 in existence as of today that would be able to meet  
5 this request for information for office space in  
6 downtown Anchorage?

7 A. Well, it says occupancy is required by  
8 May 1st, 2014, so obviously that couldn't be done.  
9 I understand that both the Mental Health Trust and  
10 the Alaska Pacific University endowment lands had  
11 suitable parcels within six blocks, maybe less, of  
12 the current Anchorage Legislative Information  
13 Office, that they could have built suitable offices  
14 for around or under three dollars a square foot.

15 Q. Do you know how long it would have taken to  
16 build such office space?

17 A. Not any longer than it took to, you know,  
18 tear down the existing one and the building next to  
19 it and construct a new building.

20 Q. So roughly a year?

21 A. I don't know. I -- I would think it could  
22 be done in a year. You know, it depends when --  
23 when things are started and all that.

24 Q. So --

25 A. And I'm not -- well, go ahead.

1 Q. So it could take longer than a year,  
2 depending on seasonal challenges for construction?

3 A. It seems like it. I mean, you would have  
4 to ask them.

5 Q. Alaska Building, Inc., originally filed a  
6 complaint in this case for both a property damage  
7 claim and challenging the legality of the lease. Is  
8 that correct?

9 A. Yes.

10 Q. The property damage claim piece of that,  
11 did you have any discussions with any of the  
12 defendants, before filing a claim, alleging  
13 negligence for that property damage?

14 A. I -- well, I had submitted a claim, and I  
15 had provided a draft complaint to the landlord, or  
16 landlord's attorney.

17 Q. And is that Mr. McClintock?

18 A. That was Rebecca Windt, I think, at that  
19 time.

20 Q. Okay. So when you say --

21 A. Well, no. Actually, I submitted it -- now,  
22 let me go back. I submitted it to Criterion, the  
23 contractor, and then -- I submitted the claim to  
24 them, and then I -- I definitely provided a draft of  
25 the complaint to Ms. Windt. And I'm not sure if I



1 did to Criterion.

2 Q. So you sent the claim to Criterion, and you  
3 sent a draft complaint to Ms. Windt on behalf of  
4 716 West Fourth Avenue LLC, and you may also have  
5 submitted a copy of that draft complaint to  
6 Criterion. Is that right?

7 A. Well, now that I'm thinking -- you know, my  
8 recollection has been refreshed -- so when I sent it  
9 to Criterion, they basically said that Ashburn &  
10 Mason would be handling it. And so then when no  
11 action was taken on the claim after about a month,  
12 I -- I started contacting Ms. Windt about it.

13 Q. Did you contact anyone else about it?

14 A. No. Criterion was represented, so I -- I  
15 felt I had to talk to their attorney.

16 Q. Did you contact any other parties, other  
17 than Criterion and the landlord?

18 A. Not that I recall. And, again, it was -- I  
19 submitted the -- well, you have -- let me go back.  
20 I -- the claim I submitted to -- by e-mail to  
21 Criterion and to 716, I don't recall if I submitted  
22 it to the architect or not. It seems like there was  
23 someone else.

24 Q. Did you submit it to the Legislative  
25 Affairs Agency?

1 A. No.

2 Q. Why not?

3 A. At that point it was really a dispute with  
4 Criterion, and I really didn't want to get into the  
5 politics of it.

6 Q. I'm sorry. You faded off there.

7 A. And I didn't really want to get into the  
8 politics of it.

9 Q. Did you ask that an expert come out to  
10 inspect the alleged damage to the shared wall?

11 A. Well, I had my engineer, Dennis Berry, look  
12 at it, yes. I mean, there were various times when  
13 the slab failed, when we looked at the stairwell  
14 going down to the Fourth Avenue -- to Fourth Avenue.

15 Q. I'm going to rudely interrupt you, because  
16 I think we may be going in different directions. My  
17 question was whether -- or what I intended my  
18 question to be was whether you had any other party's  
19 expert witness, an engineer, anything of that sort  
20 come to inspect the property, not just your own  
21 engineer.

22 A. Well, Criterion had -- I allowed  
23 Criterion's engineer to come and inspect --

24 Q. Okay.

25 A. -- if that's the question.

1 Q. That was much closer to the question I  
2 meant to ask. Thank you.

3 And who was present for that inspection?

4 A. I think Mr. Robertson was.

5 There was Mark Scheer, the lawyer for  
6 Criterion. There was Robert -- it might have been  
7 Harrower, Harr- -- or Harr- -- the engineer. Dave  
8 DeRoberts with Criterion, Berry with Criterion,  
9 Kendall with Criterion.

10 Q. Was there anyone --

11 A. I don't think -- I don't think Jeff Koonce  
12 was there.

13 Q. Okay. And understanding that there --

14 A. There was quite a few people there,  
15 actually.

16 Q. It sounds like quite a party. Was there  
17 anyone there on behalf of the Legislative Affairs  
18 Agency?

19 A. No.

20 Q. Were they invited?

21 A. No.

22 Q. Did you believe, Mr. Gottstein, that the  
23 defendants were moving too slowly to resolve your  
24 claim of property damage?

25 A. Yes.

1 Q. And that was why you filed suit involving  
2 the property damage claim?

3 A. Yeah. Me, and my understanding is that  
4 insurance companies basically stonewall, and you're  
5 going to end up having to file anyway.

6 Q. Okay. And at the same time that you filed  
7 the complaint involving the property damage, you  
8 also brought a claim involving the alleged  
9 illegality of the LIO building lease. Is that  
10 right?

11 A. When I filed the lawsuit?

12 Q. Yes.

13 A. Yes.

14 Q. Okay. And just --

15 A. So can I just say -- I mean, I don't -- I  
16 object to the relevancy of all this stuff, not the  
17 last one, but previously. But go ahead.

18 Q. Thanks. During the conversation that you  
19 and I had in June, Mr. Gottstein, you stated that  
20 you included Count I, this LIO illegality of the  
21 lease issue, in the complaint because you were  
22 already going to be filing suit involving the  
23 property damage claim. Do you recall that?

24 A. No, I don't recall that, but I don't  
25 dispute it.

1 Q. Okay. All right. If not for the property  
2 damage claim, if not for needing to file a lawsuit  
3 to move along this property damage claim, it was not  
4 your plan to bring a separate suit on Count I  
5 involving the LIO lease. Isn't that right?

6 A. That's correct. And I really -- again, I  
7 object to relevancy of this, because I don't  
8 think -- you know, this was brought on behalf of the  
9 people in the state of Alaska, and so kind of my  
10 motivation is they're totally irrelevant.

11 Q. Well, we'll get to that. On June 8th of  
12 this year, you filed your first amended complaint.  
13 Does that time sound about right to you?

14 A. Yes.

15 Q. And you added the Legislative Affairs  
16 Agency as a defendant in Count II as part of this --

17 A. Yes.

18 Q. -- first amended complaint?

19 Were there any new facts that you uncovered  
20 between March 31st and June 8th that caused you to  
21 believe that the Legislative Affairs Agency was  
22 responsible for any property damage to the building?

23 A. There were no new facts. I mean, the basis  
24 of it was that the illegal lease, from my  
25 perspective anyway, is what caused the damage, that

1 if the -- if the illegal lease hadn't been entered  
2 into, then the Alaska Building would not have been  
3 damaged. And Legislative Affairs Agency was a party  
4 to that -- is a party to that lease.

5 Q. Okay. And I think I know the answers to  
6 these questions, but I'm just going to try to  
7 address them quickly. Did you have any factual  
8 basis for believing that the legislative agency --  
9 legislative -- I'll just call them LAA for short  
10 here -- performed any part of the construction in  
11 this matter?

12 A. No. But the contractor and the plans were  
13 incorporated into the lease.

14 Q. Okay.

15 A. So they -- you know, this -- this -- in my  
16 view, this was a construction contract that they  
17 basically signed off on, including the demolition of  
18 what I refer to as the old Empress Theater, which  
19 was most recently the Anchor Pub.

20 And to me, damage to the Alaska Building was  
21 almost inevitable as a result of that because of the  
22 shared party wall, and, ultimately, which I didn't  
23 appreciate at the time, the plans for undermining the  
24 foundation of the Alaska Building, basically.

25 Q. Okay. So same question with respect to any

1 factual basis for believing that LAA either oversaw  
2 the design, assisted the architect, or took any  
3 affirmative steps with respect to the construction  
4 itself, aside from signing the lease.

5 A. Well, they -- since then, in going through  
6 your discovery, it's pretty clear that at least  
7 Representative Hawker was -- and his assistant at  
8 least were very involved in the actual design of the  
9 building, probably more in terms of layout. But  
10 they were involved in the design.

11 In terms of the actual construction process,  
12 I don't know that they were involved in that. I would  
13 suspect not.

14 Q. Okay. You provided discovery responses in  
15 this matter. Is that right?

16 A. Yes.

17 Q. So I'm going to hand you a copy of those as  
18 Exhibit J.

19 (Exhibit J marked.)

20 THE WITNESS: Do you have to leave or  
21 something? Is that why you're going first?

22 BY MR. CUDDY:

23 Q. Say again.

24 A. Are you going first because you have to  
25 leave? Is that the --

1 Q. We'll see. We'll see. Is this a copy of  
2 your discovery responses in this matter?

3 A. Looks like it.

4 Q. And are these true and accurate, to the  
5 best of your knowledge?

6 A. Yes.

7 Q. In response to Request for Admission 11,  
8 you indicate that you attempted but failed to get  
9 716 West Fourth Avenue LLC to abandon the project  
10 because you believed it was illegal. Is that right?

11 A. Yes.

12 Q. And when did you do so?

13 A. Shortly after I heard about it around  
14 mid-October, I talked with Mr. McClintock about it.

15 Q. And did you also raise the issue with  
16 Legislative Affairs Agency, or LLA -- LAA, at that  
17 time?

18 A. No.

19 Q. Why not?

20 A. I didn't want to get into the politics of  
21 it, basically. I mean, it had been all over the  
22 papers that -- you know, about the "no bid" contract  
23 and how exorbitant the price for the rental rate  
24 was. And it seemed, I think, a -- it seemed like it  
25 would be a futile gesture. I thought -- well, go



1 ahead.

2 Q. Well, what do you mean by that? What do  
3 you mean when you say it would be a futile gesture  
4 to notify LAA?

5 A. Because they -- it just seemed that they --  
6 I mean, they were already under a lot of criticism,  
7 and they were -- seemed bound and determined to go,  
8 go ahead. I mean, that's kind of just speculation  
9 on my part, I suppose.

10 Q. That's fine. And all I'm trying to get is  
11 your understanding or your belief at the time. But  
12 am I understanding your testimony correctly that you  
13 believed that they were already set and determined  
14 to proceed with this project as of October of 2013,  
15 and so anything you had to say to them wasn't going  
16 to change the direction of the project?

17 A. Yeah. And, again, I object to this whole  
18 line of questioning, because I don't think that it's  
19 relevant to whether -- whether or not the lease is  
20 illegal.

21 Q. So I want to show you -- or mark, I guess,  
22 as the next exhibit, Exhibit K.

23 MR. ROBINSON: Yeah, that should be.

24 MR. CUDDY: Thanks.

25 (Exhibit K marked.)

1 MR. CUDDY: Sorry.

2 MR. ROBINSON: Thank you.

3 BY MR. CUDDY:

4 Q. So I've handed you what's been marked as  
5 Exhibit K. This is a letter on the letterhead of  
6 Law Offices of James B. Gottstein, dated  
7 October 30th, 2013, addressed to Michael Geraghty,  
8 who was then the Attorney General for the State of  
9 Alaska. Do you see that?

10 A. Yes.

11 Q. And I'll represent to you that this is a  
12 document that was produced in discovery today from  
13 Alaska Building, Inc. Do you recognize this  
14 document?

15 A. Yes.

16 Q. Did you prepare this document?

17 A. Yes.

18 Q. And I note in the upper right-hand corner  
19 of the first page there's a graphic that says  
20 "Draft." Was this a draft of a letter to the  
21 Attorney General?

22 A. Yes.

23 Q. And was this letter, in fact, ever sent?

24 A. I don't believe so, no.

25 Q. If I look at the substance of the letter,

1 at the bottom of the first paragraph, it says:  
2 "...I looked into the so-called lease 'extension,'"  
3 quote, unquote, "and have discovered that it is in  
4 violation of AS 36.30.083." Do you see that?

5 A. Yes.

6 Q. And was that your understanding as of  
7 October 30th, 2013, that the lease extension that  
8 you have challenged in this litigation was in  
9 violation of AS 36.30.083?

10 A. Yes.

11 Q. You also have a Footnote 2 saying that the  
12 reviewed documents that you had reviewed are  
13 available at [gottsteinlaw.com/llo](http://gottsteinlaw.com/llo).

14 Had you begun preparing a database of  
15 documents with respect to the lease at that time?

16 A. Yes.

17 Q. What was the purpose of that?

18 A. Well, most of my work for the last dozen  
19 years or so has been with the Law Project for  
20 Psychiatric Rights, public interest law firm. And  
21 we had kind of developed a practice of posting  
22 legal-type documents.

23 And I thought this was a matter of public  
24 interest and concern, and so just an -- seemed  
25 basically a public service to make those documents

1 available. You know, if people wanted -- I think the  
2 main thing was the lease itself and the appraisal by  
3 Tim Lowe. And then there was kind of a cost  
4 validation by AHFC. I think those were the main  
5 documents there at the time.

6 Q. Okay. And you'd reviewed the statute by  
7 this time, obviously?

8 A. Yes.

9 Q. And on the second page, you say: "Please  
10 see to it that this illegal contract is canceled  
11 immediately." That's its own paragraph. Do you see  
12 that?

13 A. Where is it? Yes.

14 Q. Okay. You then go on to note that:  
15 Preparatory work on the contract has commenced and  
16 the demolition of the old Empress Theater is planned  
17 to begin November 15th.

18 And a portion of that language was  
19 highlighted. Do you know why it was highlighted?

20 A. Probably because it was something for me to  
21 come back and take a look at.

22 Q. Okay. Do you recall whether -- whether the  
23 timing described here is more or less accurate, that  
24 the demolition of the old Empress Theater building  
25 was supposed to take place sometime in mid-November?

1           A.    My recollection is that's what I was told,  
2    and I didn't think it was two -- two or so weeks  
3    later that they actually started.  Later than that.

4           Q.    Okay.  So they may have started that  
5    demolition sometime in early December, give or take?

6           A.    Yes.

7           Q.    Okay.  Why didn't you send this letter?

8           A.    Well, I -- I got very concerned that -- you  
9    know, I was very concerned about damage to the  
10   Alaska Building and was really trying to get them to  
11   take care of that party wall and the rest of the  
12   shared wall.  And I felt that if I had raised too --  
13   you know, too much of a ruckus and tried to stop it,  
14   that they would not be very diligent at protecting  
15   the wall and that the Alaska Building could be  
16   seriously damaged.

17                I mean, it -- my meeting with Mr. Pfeffer  
18   and -- before that, he was very cavalier about the  
19   wall.  In fact, you know, I had said you're going to  
20   have to saw that wall apart from the rest of it, and  
21   he -- I was flabbergasted to hear they were going to  
22   use a front-end loader or excavator to tear down the  
23   Empress Theater.  And he says, oh, no, we're not going  
24   to have to saw out that wall.  And to me that was  
25   really cavalier.

1           And they ended up, once -- you know, later,  
2   looking at it, and indeed they did saw the wall out.  
3   But the plans were inadequate for protection of the --  
4   of the wall in the Alaska Building. And I had my  
5   engineer contact them. And I just felt if I had  
6   really tried to stop it, that they -- you know, that  
7   there would be potentially negative repercussions in  
8   terms of damage to the Alaska Building.

9           Q.   When you say tried to stop it, do you mean  
10   an injunction?

11          A.   There was that, too, yes.

12          Q.   Okay.

13          A.   I mean, that was certainly one of the  
14   considerations for not filing for an injunction.  
15   The other one being Mr. McClintock pointed out that  
16   the bond would be prohibitive. And I thought about  
17   that. Because I felt like I -- I had the -- I had  
18   to either -- if I wasn't successful, it was going to  
19   subject the Alaska Building to a lot of potential  
20   damage, and so I decided not to pursue it.

21          Q.   So I understand the bond issue for the  
22   injunction. What about seeking a declaratory  
23   judgment action?

24          A.   Well, that wouldn't help, if -- if there  
25   was no injunction to stop it.

1 Q. Would that have put the Legislative Affairs  
2 Agency on notice of your concerns about the  
3 purported illegality of the lease?

4 A. I mean, I don't think that the Legislative  
5 Affairs Agency needed to be put on notice. I mean,  
6 to me, it's blatantly illegal. It's illegal on its  
7 face.

8 So to me, you know, you can make whatever --  
9 can draw whatever conclusions, but the obvious ones  
10 were that they wanted to go ahead and do this  
11 regardless of the statute, and felt like they could  
12 pull it off.

13 So, yeah, I -- I felt they were on notice  
14 that it was illegal, and I think some of the discovery  
15 that you provided kind of suggests that as well.

16 Q. Mr. Gottstein, Alaska Building, Inc. had an  
17 indemnification agreement, including proof of  
18 insurance, for any damages that the building  
19 incurred as a result of the construction. Isn't  
20 that right?

21 A. Yes.

22 Q. So if you had an indemnification agreement  
23 in place, why not bring suit?

24 A. Well, there was a lot of history before  
25 that, and I -- Mr. Pfeffer insisted that any -- any

1 claims would have to go through insurance, the  
2 insurance.

3 And so, you know, from my perspective, that's  
4 basically a crooked business, and insurance companies  
5 always try to get out of paying what's due. And  
6 that's not really a satisfactory remedy. It was --  
7 which is proven by subsequent events. And so it was  
8 the best I could get, but it was far from  
9 satisfactory.

10 Q. When you spoke with Mr. McClintock in early  
11 October of 2013, you already concluded, in your own  
12 mind anyway, that the lease was illegal. Is that  
13 right?

14 A. Yes.

15 Q. And you had reviewed the statute by that  
16 point to reach that conclusion?

17 A. Yes. Again, you know, what -- when I knew  
18 that was illegal, I think, is irrelevant to this  
19 lawsuit, because it's brought on behalf -- you know,  
20 as citizen taxpayers, and it's brought on behalf of  
21 the people in the state of Alaska. So, you know,  
22 what I knew, you know, what anybody else knew,  
23 doesn't, I think, really impact that.

24 Q. When was the first time that you raised the  
25 issue of the purported illegality of the lease with



1 anyone from Legislative Affairs Agency?

2 A. I don't know that I did prior to bringing  
3 suit.

4 Q. So certainly not before the construction  
5 began?

6 A. I think this has been asked and answered,  
7 hasn't it?

8 Q. If the answer is correct, then I can move  
9 on.

10 A. Yes.

11 Q. Okay. You took a number of photographs of  
12 the construction during its course, at least a few  
13 of which we have seen in some of the pleadings in  
14 this case. Is that right?

15 A. Yes.

16 Q. Was this a significant project?

17 A. Yes. It was certainly in my mind. I  
18 think --

19 Q. Was it your understanding that millions of  
20 dollars were being spent on the renovation?

21 A. Yes.

22 Q. Even tens of millions?

23 A. But I object to the characterization of  
24 "renovation," but, yes, on the project.

25 Q. Okay. We'll just call it the project. Is

1 it fair to say that tens of millions of dollars were  
2 being spent on the project?

3 A. That seems likely. I mean -- yeah, I think  
4 that's probably true. It's far more expensive to  
5 have demolished the old building and the Empress  
6 Theater and then build up from there than to build a  
7 new building.

8 Q. Okay. And you were aware that that was the  
9 plan, to do this demolition of the old Empress  
10 Theater and at least some of the original building  
11 in order to create what is now the LIO building?

12 A. Well, it was virtually all of the old  
13 building. The only thing they left was the steel  
14 frame and foundation and a little part of the  
15 concrete skin on the west wall and the south -- the  
16 bottom of the south corner.

17 Q. Okay. So using your description of it, you  
18 were aware of that, that that was basically the  
19 scope of the construction before it began?

20 A. I think so, yes.

21 Q. Okay. Were you also aware that the  
22 Legislative Affairs Agency was contributing seven  
23 and a half million dollars to the cost of the  
24 project as payment for certain tenant improvements?

25 A. You know, I'm not really sure when I became

1     aware that that was, you know, a separate payment up  
2     front. I'm not really sure when I was aware of it.  
3     I mean, probably from whenever it first appeared in  
4     the newspaper.

5           Q.     Okay. Did you review the lease before  
6     construction began as part of your review of --

7           A.     Yes.

8           Q.     -- illegalities?

9                    Okay. And if that provision was prominently  
10    displayed in the lease, do you have any reason to  
11    think you would not have reviewed that section?

12          A.     You know, when I say "reviewed it," I  
13    didn't carefully go through it at that time.

14          Q.     Okay. The Waronzof Associates' estimate of  
15    rental value, do you remember reviewing that  
16    document as part of your assessment of the legality  
17    of the lease?

18          A.     I -- I got it, and it was so patently  
19    absurd that I -- you know, I didn't really go  
20    through it. I mean, it's very long with a lot of  
21    smoke and mirrors, and I've looked at it more  
22    carefully since.

23          Q.     Okay. Your requested relief in this case  
24    is for the Court to declare the lease void. Is that  
25    correct?

1           A.    Yeah, invalid.  Illegal, invalid, yeah.

2           Q.    All right.  And --

3           A.    Null and void, I think.

4           Q.    Null and void.  Okay.  It's your -- your  
5   hoped-for relief is that the Legislative Affairs  
6   Agency would have to exit the building and go  
7   through a competitive procurement process?

8           A.    Well, I think there are a lot of different  
9   scenarios involved.  I mean, this lease -- this  
10   lawsuit is about that lease being illegal.  And I  
11   think the legislature -- well, I don't know.  You  
12   know, I -- I think the -- kind of the -- no.  There  
13   can be a lot of different scenarios.

14                   One might be a renegotiation of the -- a  
15   resetting of the lease rate to comply with at least  
16   the rental rate part of AS 36.30.083(a).  The Governor  
17   has indicated there's room in the Atwood Building, I  
18   think it's called, you know, for the offices there.  
19   So that's a possibility.

20                   I think that there are a lot of  
21   possibilities.  I think that there are -- especially  
22   with the downturn, you know, in economic activity here  
23   and the recent construction of some office buildings,  
24   I think there are other alternatives as well, too,  
25   like the -- maybe the CIRI Building at Fireweed and

1 the New Seward Highway.

2 So I -- the lawsuit is about declaring it  
3 null and void. And the legislature -- anyway, there  
4 can be --

5 Q. Okay.

6 A. That's -- I mean, I think that the lease is  
7 illegal, and that's -- that's what the lawsuit asks  
8 for declaratory judgment on.

9 Q. And so the lease should end, and then as to  
10 whatever the parties do from that point on, it  
11 should comply with the statute. Is that right?

12 A. Well, like I said, there are numerous  
13 possible scenarios.

14 Q. But all of them require that the lease be  
15 declared null and void and cease to exist so that  
16 the parties can then proceed to comply with the  
17 statute. Isn't that your position?

18 A. Well, it may not be these parties. Like I  
19 said, there might be something else. The  
20 Legislative Information Office might move somewhere  
21 else. So I think -- so what's requested is that the  
22 lease be declared -- I think what I say is illegal,  
23 null and void.

24 Q. Okay. During the August 18 hearing on the  
25 standing issue and motion to sever, you informed the

1 Court that you were looking for the Court to  
2 establish Alaska Building, Inc.'s entitlement to  
3 10 percent of any savings achieved. Do you recall  
4 that?

5 A. It came up, yes.

6 Q. Alaska Building, Inc. does have a personal  
7 stake in this case, does it not?

8 A. I'm not sure what you mean by "personal  
9 stake."

10 Q. Monetary. You have a monetary stake in  
11 this case.

12 A. Other than the 10 percent?

13 Q. No. The 10 percent will do just fine.

14 A. Oh, yeah.

15 Q. The 10 percent is a monetary interest in  
16 the case --

17 A. Yes.

18 Q. -- correct?

19 Okay. And in some of the briefing in this  
20 case, specifically the opposition to the motion to  
21 dismiss or sever, Alaska Building, Inc. asserted that  
22 the amount being paid over the life of the lease was  
23 more than \$21 million more than what was allowed under  
24 the statute. Is that right?

25 A. Yes.

1 Q. And so if you were -- you, Alaska Building,  
2 Inc. was to receive 10 percent of the savings,  
3 that's a minimum of \$2.1 million in savings,  
4 correct? Well, 21 million in savings, but 2.1 is  
5 this 10 percent. Is that right?

6 A. Right. There have been some slight changes  
7 in those amounts with the affidavit of Larry Norene.  
8 But, yes, I mean -- so the State would, you know,  
9 say, end up with 19 million and Alaska Building,  
10 Inc. would get two.

11 Q. Okay. So that --

12 A. The judge expressed some skepticism about  
13 that, and there's a pending motion on that issue.

14 Q. That there is. For today, though, I just  
15 want to focus on this idea of monetary interest.  
16 This 2 million or so that constitutes the  
17 10 percent, does that go back to the taxpayers or  
18 does that go to Alaska Building, Inc.?

19 A. It's -- it's for -- it's to go to Alaska  
20 Building, Inc., because otherwise is -- if it's  
21 successful, the State -- if it wasn't successful,  
22 the State would get none of it, and so this would  
23 be -- well, you could look at it different ways, but  
24 the State would get 19 million and Alaska Building,  
25 Inc. would get two.

1 Q. You have experience litigating qui tam  
2 cases, do you not?

3 A. Yes, some.

4 Q. And in particular, you led the charge in  
5 the US ex rel. Law Project for Psychiatric Rights  
6 versus Matsutani case?

7 A. Yes.

8 Q. The trial judge held in that case that the  
9 public already knew about the alleged misconduct.  
10 Is that right?

11 A. Well, there is -- I wouldn't say that  
12 that's a fair characterization. Under the False  
13 Claims Act, it's a very arcane process or set of  
14 rules, and one of them is what's called the public  
15 disclosure bar.

16 Q. Uh-huh.

17 A. And it's changed over the years, but  
18 basically, if I can recall it, if the -- I forget  
19 what it was, the transit -- but basically if the  
20 facts were disclosed through certain enumerated  
21 sources, including court cases, then -- then the  
22 public disclosure bar would be triggered.

23 And so I filed -- or the Law Project for  
24 Psychiatric Rights had filed a previous lawsuit in  
25 which this was raised in state court, and -- and so



1     that the judge held that was one of the enumerated  
2     sources.

3             Since then, the statute has been changed, and  
4     it only applies to federal court. So I wouldn't say  
5     that the public knew about it, but the judge held that  
6     the public disclosure bar had been triggered.

7             Q. And that ruling was affirmed by the Ninth  
8     Circuit?

9             A. In a non-precedential ruling, yes.

10            Q. And how much were you seeking in that case?

11            A. Well, it kind of ends up being a  
12     mind-boggling amount, so I don't think we had any  
13     specific number. Each false claim -- I mean, under  
14     the federal False Claims Act, the relaters, which  
15     are the plaintiffs suing on behalf of the  
16     government, get between 25 and 30 percent of any  
17     recovery. And every false claim carries a minimum  
18     penalty of \$5,500. And since each prescription that  
19     was not for a medically accepted indication was a  
20     false claim, it really adds up. So it was a very  
21     large amount.

22            Q. When you say "it really adds up," are we  
23     talking about tens of millions, hundreds of millions  
24     or billions?

25            A. Depends on the particular defendant. So --

1 Q. Taking all the defendants together.

2 A. Well, I mean, one of the claims was against  
3 Walmart, so that would be billions.

4 Q. Okay. And you were seeking personally, on  
5 behalf of Law Project for Psychiatric Rights, in the  
6 25 to 30 percent range of that as your share as a  
7 relater?

8 A. Well, again, I -- it wasn't seeking  
9 personally. It was for the Law Project for  
10 Psychiatric Rights. But the whole idea behind the  
11 lawsuit was not the financial gain to PsychRights,  
12 the Law Project for Psychiatric Rights, it was to  
13 put a stop to this very harmful practice of drugging  
14 children with these very powerful drugs that have  
15 never been approved for the use in children, cause  
16 them great harm, and that for which there's no  
17 scientific evidence supporting their use.

18 And the idea was that if a psychiatrist was  
19 tagged with one of these, that large judgment, which  
20 in that case would be in the millions range, a few  
21 millions, that that would cause the other  
22 psychiatrists to, you know, curtail the practice. And  
23 that was -- that was the -- and still is basically the  
24 reason for it.

25 Now, the pharmacies were included, because

1 while a psychiatrist might have a million or two or  
2 few to -- you know, to get, we were trying to attract  
3 the private bar. And if the relater would get, say,  
4 25 percent of a million and the lawyer got 30 -- a  
5 third or 40 percent of that, it's not very attractive  
6 to the lawyers. But you get a pharmacy -- you know,  
7 has deep pockets, so -- and the idea was to make it  
8 attractive to the private bar.

9 But the purpose was not really to get money  
10 to PsychRights. It was to stop this harmful practice  
11 by psychiatrists.

12 Q. And getting 20 or 30 percent of billions  
13 would be a nice side benefit?

14 A. It would be good.

15 Q. Yeah. Did you cause defendants to incur  
16 hundreds of thousands of dollars in fees and costs  
17 in connection with that litigation?

18 A. Don't know.

19 Q. Didn't they seek fees against you?

20 A. I guess, yeah, now that you mention it. I  
21 don't recall how much it was. It seems like it  
22 was -- I don't think it was hundreds of thousands,  
23 but maybe in the hundred-thousand range, maybe  
24 under -- maybe 200,000. I don't know.

25 Q. Okay. You've claimed that the LIO

1 project -- and I take it you understand what I mean  
2 when I say "the LIO project," the construction  
3 that's at issue here, that that is the product of  
4 corruption. Is that right?

5 A. It appears like it.

6 Q. And you're claiming that the legislature,  
7 as represented through the Legislative Affairs  
8 Agency, is defrauding the State?

9 A. Well, the -- it's obvious to me that it  
10 doesn't comply with AS 36.30.083(a), that the rental  
11 rate is well over twice what the market rate is, and  
12 for that -- and it's obvious that it is. And so  
13 that just has the odor of corruption.

14 Q. Is that a yes?

15 A. What was the question?

16 Q. You're claiming that the legislature has --  
17 acting through the Legislative Affairs Agency, is  
18 defrauding the State of Alaska. Is that right?

19 A. I'll stand by my answer. I mean,  
20 defrauding? I don't -- you know, I'm not -- I think  
21 I answered the question.

22 Q. I'm not sure that you did, so I'll try it a  
23 different way. Are you claiming that the  
24 Legislative Affairs Agency, on behalf of the  
25 legislature, is engaged in some corrupt practice to

1 take money away from the State?

2 A. The lease blatantly violates  
3 AS 36.30.083(a), in that it's well over twice the  
4 market rate when it's required to be at least  
5 10 percent under, leaving aside the issue of whether  
6 or not it's an extension.

7 And, you know -- and the Legislative Affairs  
8 Agency signed off on that in spite of that, and it  
9 resulted in -- you know, over the life of the  
10 contract, some \$20 million over what it should be. So  
11 you can characterize that however you want, but that's  
12 the way I would characterize it.

13 Q. Did the legislature authorize and ratify  
14 the LIO project?

15 A. The whole legislature?

16 Q. Yes.

17 A. Not that I know of.

18 Q. What do you know, in terms of the extent of  
19 any authorization or ratification of the LIO  
20 project?

21 A. By the whole legislature?

22 Q. By any portion of the legislature. How did  
23 we get here, that we have a project that has gone  
24 forward and tens of millions of dollars have been  
25 spent for legislators to work and assist the public?

1 Did the legislature know about this? Is it your  
2 understanding that they were surprised to find out  
3 that a building had been renovated and prepared for  
4 them?

5 A. Well, my understanding is that in June  
6 of -- June or July of 2013, the legislative council  
7 passed amendments to its procurement code purporting  
8 to authorize this. And then the legislative council  
9 authorized Representative Hawker, who is chair of  
10 the legislative council, to negotiate the lease,  
11 which -- it was supposed to be a lease extension  
12 complying with the revised procurement rules and  
13 AS 36.30.083(a).

14 And it's my understanding that a number of  
15 legislators were flabbergasted when this deal actually  
16 was announced as being far in excess of what was, you  
17 know, approved. So I don't think the full legislature  
18 had a vote on it. I think -- I mean, I just don't  
19 think so. I mean, I don't think they wanted to stand  
20 up and vote in favor of this.

21 Q. If you're mistaken and the legislature as a  
22 whole either approved, authorized or ratified the  
23 project, does that change your position in this  
24 lawsuit?

25 A. I'd have to look at the circumstances of

1     that. I would be -- I'd welcome any kind of any  
2     indication of that.

3           Q. Under a qui tam case like you pursued in  
4     the Matsutani case, the complaint is filed under  
5     seal. Is that right?

6           A. Yes.

7           Q. And that was not done here?

8           A. No. It's not really a qui tam case.

9           Q. Okay.

10          A. And...

11          Q. So I think we can agree on that, that this  
12     is not a qui tam case. What is the basis for  
13     claiming an entitlement to 10 percent of the  
14     savings?

15          A. I think that it's -- it's a way to make  
16     real the citizen taxpayers' right to bring actions  
17     on behalf of the government to stop government --  
18     illegal government action.

19                 What we had -- from about 1974 through 1998,  
20     the Alaska Supreme Court had established what's called  
21     a public interest exception to Civil Rule 82,  
22     providing that public interest litigants that were  
23     truly suing on behalf of the public were not subjected  
24     to having attorneys' fees against them and would  
25     have -- if they prevailed, would have -- be awarded

1 full attorneys' fees.

2 So there wasn't really -- if they could  
3 establish that they were public interest litigants,  
4 they wouldn't really face the risk of having  
5 attorneys' fees awarded against them.

6 In 2003, the Alaska legislature passed a  
7 statute that changed that, except with respect to  
8 constitutional claims, basically because they were  
9 tired of paying attorneys' fees in all these cases  
10 where the government was found to have acted  
11 illegally.

12 And so now you have a situation where anybody  
13 trying to bring such a suit faces potentially ruinous  
14 attorneys' fees if they don't prevail, or certainly  
15 large attorneys' fees if they don't prevail. And  
16 that, in my -- my sense of it, has essentially  
17 virtually dried up public interest litigation, and so  
18 now the government pretty much has free rein to act  
19 illegally without any kind of check through this  
20 public interest litigation.

21 And so by -- in these types of cases, where a  
22 big, you know, savings or recovery on behalf of the  
23 government is achieved, this is a way to really make  
24 real the citizens' rights to sue to redress illegal  
25 government action.



1 Q. So thank you for the answer. I'm going to  
2 go back to my original question, which is: What is  
3 the basis for your claim to an entitlement of  
4 10 percent of the fees?

5 A. I just said it.

6 Q. I'm not sure that you have. You gave me a  
7 history lesson about the public interest exception  
8 for Rule 82. Is there a statute?

9 A. No.

10 Q. False Claims Act? This isn't a qui tam  
11 case, right?

12 A. Correct.

13 Q. Is there any common law that you can point  
14 to to say that a savings of this type had been given  
15 a private litigant?

16 A. No. Well, not yet anyway. So, I mean,  
17 it's possible I'll come up with some, but I haven't  
18 found -- I haven't seen any yet.

19 I mean, I think that the -- this is a very  
20 important public issue, and the point is, is that if  
21 this right of public -- the public citizens to sue  
22 over illegal government action is to have any, you  
23 know, reality at all, there needs to be some  
24 countervailing element for the prospect of attorneys'  
25 fees being awarded against a plaintiff if they're

1     unsuccessful.

2           Q.     So I'm going to switch gears.

3           MR. ROBINSON:   Before you do that, Kevin, I'm  
4     going to request a brief restroom break.  Is that  
5     okay?

6           MR. CUDDY:    Sure.  Yeah.

7           MR. ROBINSON:   Just a couple minutes.

8           (Recess taken.)

9           MR. CUDDY:    Okay.  I am ready whenever you  
10    are.

11          Q.     Mr. Gottstein, just stepping back for a  
12    minute, the construction in this project started in,  
13    roughly, early December of 2013.  Is that right?

14          A.     Yes.

15          Q.     And once construction started, you had no  
16    reason to believe that the Legislative Affairs  
17    Agency was going to abandon the lease due to any  
18    alleged problem with the procurement process,  
19    correct?

20          A.     Yes.

21          Q.     And you were aware, once construction  
22    started, that the defendants were going to be  
23    committing millions of dollars to the project in  
24    order to complete the construction?

25          A.     It's been asked and answered, hasn't it?

1 Q. I think it has. All right.

2 Alaska Building, Inc. made money off this  
3 project. Is that right?

4 A. I wouldn't say that. It received -- well,  
5 it received payments, so Criterion leased space that  
6 would have been impossible to lease during the --  
7 constructively evicted the tenant, and they leased  
8 it for their office. And so I suppose -- I mean,  
9 Alaska Building, Inc. made money on that. Other  
10 payments were really compensation for expenses.

11 Q. So let's talk about just compensation then,  
12 not profit or anything like that, but just  
13 compensation. How much compensation did Alaska  
14 Building, Inc. get that's directly connected to this  
15 LIO project?

16 A. You know, that was a question I -- in the  
17 discovery I answered today. So, you know, my memory  
18 might be a little bit faulty, but there was, I  
19 think, 15,000 for professional fees that actually  
20 did include some attorneys' fees. But not just.  
21 There was a payment to set up an offsite mirroring  
22 of the -- of our -- of our server, the Alaska  
23 Building, Inc. server. And also -- which hosts  
24 other organizations, too, and websites and things,  
25 that was in a room that -- one of the walls was that

1 shared wall, and so -- so I felt I had to have a  
2 realtime mirroring or backup replication off site in  
3 case of some sort of catastrophe. And they paid for  
4 that. I had --

5 Q. My question is specific just to dollars.  
6 I'm trying to understand, was this a -- did you  
7 receive --

8 A. That was 10,000.

9 Q. -- 30,000 total in compensation that was  
10 connected to the project? 50,000? 100,000? What  
11 came in the door, in terms of compensation that was  
12 directly related to the project?

13 A. Well, the large ones, it was like 10,000,  
14 twenty-five -- if you count -- it was, I think,  
15 under thirty, if not counting the Criterion lease.  
16 I think under thirty, maybe kind of close to it, and  
17 14,400, I think, for the Criterion lease.

18 Q. Okay. So somewhere in the vicinity of  
19 40,000 total, if you include the Criterion lease?

20 A. Seems like it. But I'd really want to  
21 refer you to my response to 716's discovery request,  
22 because it's precise.

23 Q. Okay. If we had more time to review those  
24 discovery requests that came in -- or discovery  
25 responses that came in today, I would be pointing to

1     them directly, but we're just making do with what  
2     we've got for the moment.

3           A.    Well, I'm just, you know -- I, you know,  
4     looked them up and put them in there, and so that --  
5     that's pretty definitive and so --

6           Q.    I understand. And so whatever is in that  
7     discovery response is true and accurate, to the best  
8     of your knowledge?

9           A.    Yes.

10          Q.    Okay. And how often were you getting  
11     checks from the -- from the project for  
12     compensation?

13          A.    I really just got them once.

14          Q.    At the beginning of the project or after it  
15     was done?

16          A.    No. December 6th, 2013, I think.

17          Q.    Okay.

18          A.    I got -- maybe it was a day or so later for  
19     the -- no, I think it was December 6th. I got -- I  
20     got checks for all of this.

21          Q.    Okay. Did you negotiate with either  
22     716 West Fourth Avenue LLC or Criterion with respect  
23     to how much you should receive?

24          A.    You know, I had someone helping with that,  
25     Eric Follett, so through him, yes.

1 Q. Okay. How much were you asking for?

2 A. For what?

3 Q. For compensation. And I'm just talking  
4 about the whole pot here.

5 A. Well, my big concern was catastrophic  
6 damage to the Alaska Building, and there was not  
7 really a satisfactory resolution of that in my mind,  
8 from my perspective. So from my perspective, that's  
9 a big mess.

10 And, you know -- and I suffered two hundred  
11 and fifty -- or Alaska Building, Inc. has suffered  
12 \$250,000 worth of damage and has gotten fifty so far  
13 and may probably get another fifty, and then have to  
14 litigate for the rest. So I don't recall in terms of  
15 those other pieces. I think the other specific pieces  
16 probably were pretty close to what I asked for.

17 Q. Okay. Have you contacted anyone from the  
18 press about this case?

19 A. Yes.

20 Q. Who?

21 A. Well, I have this e-mail list that I  
22 sent -- I can't remember if I sent anything out to  
23 the whole list, but basically it's been Nathaniel  
24 Herz, Lisa Demer, Rich Mauer at the Alaska Dispatch  
25 News. I must have sent something out to the whole

1 list, because I got calls from, like -- what, like,  
2 Fox 4. And ABC, Channel 13, I think, did a story on  
3 our argument over standing.

4 Q. Aside from e-mail contacts, have you also  
5 had phone contacts with members of the press about  
6 this case?

7 A. Yes.

8 Q. Who have you spoken with?

9 A. Lisa Demer and Nathaniel Herz and Rich  
10 Mauer.

11 Q. What did you say?

12 A. I mean, I talked about -- I've had various  
13 conversations. Talked about the illegal nature of  
14 the lease. I mean, my big effort was I wanted -- I  
15 felt that it would be good to have people show up at  
16 the standing hearing, and so it was some effort to  
17 get them to actually put anything in about it.

18 Q. Any other reasons why you've contacted  
19 press about this case?

20 A. Well, I think it's a matter of public  
21 importance, so that's the reason.

22 Q. Okay. You published all of the discovery  
23 that you received in this case on line. Is that  
24 right?

25 A. I'm not sure all of it's up there yet, but

1 I -- I have been posting it.

2 Q. And why do you do that?

3 A. I think it's a matter of public interest.

4 Q. You were involved, Mr. Gottstein, with the  
5 release of the Zyprexa papers?

6 A. Yes.

7 Q. If you had to do it over again, would you  
8 release those papers?

9 A. Not -- no, not in the way that I did.

10 Q. You can object to this characterization,  
11 but you boast about it a bit on your website, do you  
12 not, for Law Project for Psychiatric Rights?

13 A. Well, the -- these were documents that had  
14 been sealed, kept -- you know, made secret that  
15 showed tremendous harm being done by Zyprexa that  
16 Eli Lilly had -- you know, was keeping -- that knew  
17 about this huge amount of damage that was kept  
18 secret from the public, so it also was a matter of  
19 great public importance.

20 So there was a protective order that said  
21 that if the documents were subpoenaed in another case,  
22 that Eli Lilly had to be given notice of it and a  
23 reasonable opportunity to object before the person who  
24 was subpoenaed could produce it.

25 And I followed that. And I think that it



1 actually was a very important thing. One of the -- I  
2 think that tens of thousands of lives have probably  
3 been saved, maybe hundreds of thousands. I think it  
4 also has changed the culture a little bit of the --  
5 of these -- of this kind of litigation.

6 The lawyers are faced with this problem:  
7 They've got clients who they're representing, and the  
8 drug company says, well, we'll settle, but you have to  
9 agree to keep these documents that show how much we're  
10 harming people secret. And the lawyers have tended to  
11 say, well, our obligation to our clients requires us  
12 to recommend that.

13 And since then, there's gotten to be a lot  
14 more recognition that it's important for these types  
15 of documents to become available, and they have in  
16 other cases.

17 Q. It was a good result for you, wasn't it?

18 A. Yes. Well, it actually cost me a lot of  
19 money.

20 Q. I understand that, and I have seen the  
21 fundraising letters. But was this an instance where  
22 you believe that the end justified the means?

23 A. No. I thought I was operating completely  
24 legally.

25 Q. Judge Weinstein didn't see it that way, did

1 he?

2 A. Correct.

3 Q. And he thought that you had deliberately  
4 misled Eli Lilly and violated the terms of the  
5 protective order?

6 A. I don't -- no, I don't think that's a fair  
7 characterization. I mean, that I deliberately  
8 misled Eli Lilly? No. I don't think that. He --  
9 he determined that I had violated the protective  
10 order, of which I was not a party, but in any  
11 event --

12 Q. Judge Weinstein found that you used a  
13 subpoena as a subterfuge to get around the  
14 protective order. Isn't that right?

15 A. You'd have to show me the language. I'm  
16 not sure that -- I'd have to look at the exact  
17 language of his decision. That doesn't sound right.

18 Q. Leaving aside the language of the decision,  
19 was it a subterfuge?

20 A. No.

21 Q. Did you deliberately violate the terms of  
22 the protective order?

23 A. No.

24 Q. You sent these protected materials to  
25 contacts at The New York Times. Is that right?

1           A.    Yes.  They were not protected at that time  
2    in my mind, because the terms of the protective  
3    order had been complied with.  I mean, the  
4    obligation was on the person I subpoenaed, who was  
5    an expert in the case, expert witness in the case,  
6    to comply with the protective order.  And he  
7    determined that Eli Lilly had been given an adequate  
8    opportunity to object, and then provided them to me.  
9    And at that point I believe that they were no longer  
10   protected.

11          Q.   Magistrate Judge Mann also reviewed some of  
12   this information and your conduct in the Zyprexa  
13   proceeding.  Is that right?

14          A.   So, first off, I don't see how this -- I'm  
15   going to object to this line of questioning, just  
16   for the record, as I don't see how it's relevant or  
17   likely to lead to admissible evidence.

18                What was the question again?

19          Q.   Did a magistrate judge, Mann, also get to  
20   oversee some of the Zyprexa proceedings and your  
21   conduct with respect to the protective order?

22          A.   I'm not -- I don't recall the name.  It  
23   might have been Mann.  I don't know why it wouldn't  
24   have been.

25          Q.   Was there a magistrate judge involved?

1           A.    Early on, like December 19th, 2005,  
2           something, 2006.

3           Q.    And that magistrate judge found that your  
4           conduct smacked of bad faith.  Isn't that right?

5           A.    I'd have to look at the decision.  They  
6           were not happy with me.

7           Q.    Was it -- was -- your use of the subpoena  
8           to obtain and then produce these protected materials  
9           a matter of public interest, was that done in bad  
10          faith?

11          A.    No.  I had -- no.

12          Q.    Judge Cogan also reviewed some of your  
13          conduct in the case.  Isn't that right?

14          A.    That name sounds familiar.

15          Q.    He found that you were aware that these  
16          documents were restricted.  Is that right?

17          A.    Yes.

18          Q.    And he also found that you knew what you  
19          were doing and that you deliberately tried to  
20          circumvent the protective order.  Isn't that right?

21          A.    You know, the document speaks for itself,  
22          so like I said, they were not very happy with me.  I  
23          felt like I complied with it.  I expected Lilly to  
24          object, make a timely objection, and then I would be  
25          arguing it to the Superior Court why my client, who

1 was faced with being drugged against his will, why  
2 he was entitled to have this information that would  
3 show that it was very harmful. I expected that to  
4 occur.

5 And instead, Eli Lilly did not -- kind of sat  
6 on this notice. And when I got the documents, then I  
7 got them out to various parties, including The New  
8 York Times.

9 Q. The Second Circuit affirmed the lower  
10 Court's findings with respect to this alleged  
11 subterfuge?

12 A. Yes.

13 Q. Did you agree with the Second Circuit's  
14 findings?

15 A. No. I said -- I issued a statement that  
16 said I -- I mean, I don't know -- I assume you have  
17 it here, the statement that I issued. Basically I  
18 said I believed I complied with the law, but I  
19 under- -- you know, did it in good faith, and  
20 I under- -- but I understand why Judge Weinstein  
21 believed otherwise.

22 Q. I saw that Dr. -- I'm going to butcher the  
23 pronunciation -- Dr. Egil- --

24 A. Egilman.

25 Q. Egilman -- that he entered into a

1 settlement agreement with Eli Lilly that required  
2 the payment of, I think, \$100,000. Did you ever  
3 enter into a settlement agreement with Eli Lilly to  
4 end the proceedings finally with respect to your  
5 involvement?

6 A. No. They were absolutely despicable. They  
7 all but agreed to -- to a settlement agreement and  
8 then -- basically to get me to not say anything  
9 while they -- while they were -- during Alaska  
10 versus Eli Lilly. And then once that trial was  
11 over, they just basically reneged.

12 Q. So they never entered into a settlement  
13 agreement with you?

14 A. Correct.

15 Q. Did they ever pursue the contempt  
16 proceedings that they threatened?

17 A. Not so far.

18 MR. CUDDY: Okay. I don't think I have  
19 anything further at this time.

20 MR. ROBINSON: Okay. Are we ready to  
21 proceed?

22 THE REPORTER: Yes.

23 MR. ROBINSON: Just for the record, I'm Jeff  
24 Robinson, from Ashburn & Mason, representing 716 West  
25 Fourth Avenue. And in the room with me is Eva

1 Gardner; also works with Ashburn & Mason and  
2 represents 716.

3 Jim, before we proceed, I want to get your  
4 confirmation that -- this is how I plan on doing it.  
5 I have questions for you I intend to ask today. I  
6 want to reserve time after I review your responses to  
7 our requests for production. And you're agreeable to  
8 that?

9 THE WITNESS: Yeah. Maybe we should just  
10 adjourn and come back.

11 MR. ROBINSON: Kevin, what's your schedule?

12 MR. CUDDY: Do you want to go off the record  
13 for a minute?

14 MR. ROBINSON: Yes. Why don't we do that.

15 (Discussion off record.)

16 MR. ROBINSON: Back on record. And the  
17 parties have mutually agreed to continue this  
18 deposition till October 22nd at 1:00 o'clock p.m.

19 Thank you.

20 (Proceedings recessed at 3:35 p.m.)

21 (Signature reserved.)

22 -o0o-

23

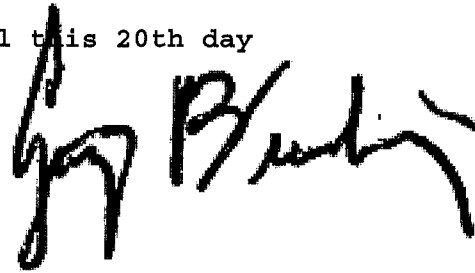
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25

CERTIFICATE

I, GARY BROOKING, Registered Professional  
Reporter and Notary Public in and for the State of  
Alaska, do hereby certify that the witness in the  
foregoing proceedings was duly sworn; that the  
proceedings were then taken before me at the time  
and place herein set forth; that the testimony  
and proceedings were reported stenographically by  
me and later transcribed by computer transcription;  
that the foregoing is a true record of the  
testimony and proceedings taken at that time;  
and that I am not a party to nor have I any  
interest in the outcome of the action herein  
contained.

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed my seal this 20th day  
of October, 2015.



GARY BROOKING, RPR  
My Commission Expires 6/28/2016

GB4223



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska  
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, *et al.*

Defendants.

Case No. 3AN-15-05969CI

**RESPONSE TO DEENDANT'S (LEGISLATIVE AFFAIRS  
AGENCY) FIRST DISCOVERY REQUESTS TO PLAINTIFF  
ALASKA BUILDING, INC.**

Admissions and Responses to Interrogatories herein do not constitute agreement that the requests and interrogatories, and responses thereto are relevant. Object to characterizations of the agreement as a lease extension and the project as a renovation.

**REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:** Please admit that YOU were aware as of June 9, 2013 that the Legislative Council was negotiating a deal with Mark Pfeffer to revamp and expand the Legislative Information Office building, as publicly reported.

**RESPONSE:** Deny inasmuch as I don't remember. I don't think so.

**REQUEST FOR ADMISSION NO. 2:** Please admit that on September 19, 2013, 716 West Fourth Avenue, LLC entered into an agreement with the Legislative Affairs Agency to renovate and expand the Legislative Information Office (the "LIO Project").

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 3:** Please admit that YOU were aware on or about September 19, 2013, that 716 West Fourth Avenue, LLC had signed an agreement with the Legislative Affairs Agency to renovate and expand its leased office building.

**RESPONSE:** Deny because I don't recall and don't believe that I knew about the agreement that early.

**REQUEST FOR ADMISSION NO. 4:** Please admit that YOU were aware by October 3, 2013, that the Legislative Affairs Agency had signed a deal for the LIO Project, as publicly reported by the Alaska Dispatch News.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 5:** Please admit that YOU were aware by October 3, 2013, that the construction and renovations for the LIO Project would cost tens of millions of dollars, as publicly reported by the Alaska Dispatch News.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 6:** Please admit that YOU entered into a License to Enter Indemnity and Insurance Agreement with Criterion General, Inc., on or about October 30, 2013, to allow Criterion to re-locate gas service in connection with the construction for the LIO Project.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 7:** Please admit that YOU entered into an Access, Indemnity, and Insurance Agreement with 716 West Fourth Avenue, LLC, on December 6, 2013 (the "Access Agreement").

*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

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**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 8:** Please admit that YOU became aware no later than December 6, 2013, that 716 West Fourth Avenue, LLC, would be demolishing the Empress Theater in connection with the LIO Project.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 9:** Please admit that YOU accepted payment of \$15,000 from 716 West Fourth Avenue, LLC in December 2013 for professional fees that YOU incurred to address preparation for the LIO Project.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 10:** Please admit that YOU were aware of the construction no later than December 10, 2013, as you were quoted in a news article describing the construction, <http://www.ktva.com/legislative-building-constructioncauses-the-closure-of-downtown-boutique/>

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 11:** Please admit that YOU required the contractor for the LIO Project to provide you with a certificate of insurance prior to commencement of construction for the LIO Project.

**RESPONSE:** Admit to the following extent. After failing to get 716 West Fourth Avenue LLC (716 LLC) to abandon the project because it was illegal, we negotiated an agreement in which, at 716 LLC's insistence, the contractor agreed to be responsible for damage and provide insurance.

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*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

**REQUEST FOR ADMISSION NO. 12:** Please admit that YOU entered into a space lease with Criterion General, Inc. ("Criterion"), the contractor for the LIO Project, on or about December 5, 2013 (the "Space Lease").

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 13:** Please admit that YOU were aware that Criterion was leasing space from YOU under the Space Lease in connection with the construction for the LIO Project.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 14:** Please admit that YOU accepted in excess of \$10,000 in rent from Criterion under the Space Lease.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 15:** Please admit that you were aware no later than December 21, 2013, that the LIO Project arose from what the Alaska Dispatch News called a "no-bid deal," consistent with the article you quoted in your "open letter" to Governor Walker.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 16:** Please admit that you were aware no later than December 21, 2013, that the Alaska Dispatch News stated that the renovated Legislative Information Office building would allegedly require the State to pay more than the going rate for downtown office space, consistent with the article you quoted in your "open letter" to Governor Walker.

**RESPONSE:** Admit.

*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

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**REQUEST FOR ADMISSION NO. 17:** Please admit that the renovated Anchorage Legislative Information Office building opened for business on or about January 9, 2015.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 18:** Please admit that millions of construction costs were spent on the LIO Project between October 2013 and January 9, 2015.

**RESPONSE:** Admit; the Legislative Council agreed to pay for such construction costs, which were well in excess of what new construction would have cost, agreeing to pay rent in an amount over twice market rental value.

**REQUEST FOR ADMISSION NO. 19:** Please admit that YOU first brought this legal action challenging the legality of the Extension of Lease and Third Amendment of Lease (the "Lease Extension") on March 31, 2015.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 20:** Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 18 months after the Lease Extension was signed.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 21:** Please admit that YOU first brought this legal action challenging the legality of the Lease Extension after you had already received tens of thousands of dollars in rent and other payments relating to the LIO Project from Criterion and 716 West Fourth Avenue, LLC.

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*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

**RESPONSE:** Admit; In addition to rent from Criterion because the project constructively evicted the tenant of that space, the payments were for costs incurred as a result of the LIO Project.

**REQUEST FOR ADMISSION NO. 22:** Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 18 months after you contend that the Legislative Affairs Agency violated the State Procurement Code.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 23:** Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 15 months after construction began on the LIO Project.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 24:** Please admit that YOU first brought this legal action challenging the legality of the Lease Extension after the LIO Project was completed in all material respects.

**RESPONSE:** Admit to the extent that the legal action was brought after the new Legislative Information Office Building was substantially completed and had at least some occupancy. Object to the term "in all material respects," because there is over 9 years of performance left under the agreement.

**REQUEST FOR ADMISSION NO. 25:** Please admit that there was no indication, once construction began in late 2013, that the Legislative Affairs Agency had any intention to voluntarily declare the Lease Extension void due to an alleged irregularity in the procurement process.

*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

**RESPONSE:** Admit; if the Legislative Affairs Agency had been willing to rectify its blatantly illegal action in entering into the LIO Project this action would not have been filed. It should still do so.

**REQUEST FOR ADMISSION NO. 26:** Please admit that the LIO Project did not demolish the entirety of the Legislative Information Office Building, but rather left certain key structural elements in place for a renovation project.

**RESPONSE:** Object to "key structural elements" characterization. Otherwise admit that the foundation and steel frame was left of the former Anchorage Legislative Information Office building, as was a portion of the exterior wall at the bottom south end of the west wall. While new floors were poured, some part of the floors may have also been left.

**REQUEST FOR ADMISSION NO. 27:** Please admit that the subject of the Lease Extension is a real property lease.

**RESPONSE:** Deny to the extent that the request does not acknowledge that the agreement provides for the construction of a new office building after the demolition of the existing building and the adjacent building, the newly constructed premises then being leased under the agreement. In other words, it is really a construction and lease-back agreement. Admit that LAA is currently leasing the building constructed under the agreement and to that extent it is a real property lease.

**REQUEST FOR ADMISSION NO. 28:** Please admit that the landlord both prior to and after the Lease Extension was executed remained the same.

**RESPONSE:** Admit that the landlord before and after the agreement is 716 West Fourth Avenue LLC, but deny to the extent that the ownership and management of the LLC changed substantially with the addition of Mark Pfeffer and an organization associated with Mark Pfeffer. Public records indicate that there has been a change of control and 716 West Fourth Avenue LLC has refused to produce requested documents pertaining to the ownership and operation of 716 West Fourth Avenue LLC. For this reason Alaska Building, Inc., cannot truthfully admit or deny whether the Landlord remained the same prior to and after the agreement other than that the legal entity both before and after the agreement is 716 West Fourth Avenue LLC.

**REQUEST FOR ADMISSION NO. 29:** Please admit that the address of the Legislative Information Office remained the same both prior to and after the Lease Extension was executed.

**RESPONSE:** Admit, except to the extent that 712 West 4th Avenue has been incorporated into the new building.

**REQUEST FOR ADMISSION NO. 30:** Please admit that, consistent with AS 36.30.083, a lessee may extend a real property lease with different terms and conditions than the original lease.

**RESPONSE:** Admit that certain terms and conditions, most obviously, the ending date of the lease may be different, but different terms and conditions may disqualify an agreement as extending a real property lease under AS 36.30.083(a). Calling an agreement a lease extension or reciting that it extends a real property lease does not make it a lease extension or that it extends a real property lease.

*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*



**REQUEST FOR ADMISSION NO. 31:** Please admit that the Lease Extension complied with AS 36.30.020 and the Alaska Legislative Procurement Procedures.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 32:** Please admit that, consistent with AS 36.30.083, a lessee may extend a real property lease with different pricing terms than the original lease, provided that a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension is achieved.

**RESPONSE:** Admit that premised on landlords having already amortized (recovered) construction costs and therefore able to afford to extend leases at substantially less cost, AS 36.30.083(a) allows a lessee to extend a real property lease with different pricing terms than the original lease, provided that a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The statute also limits such extensions to 10 years.

### **INTERROGATORIES**

**INTERROGATORY NO. 1;** Please describe WITH PARTICULARITY how and when YOU first became aware that the Lease Extension (1) was not the subject of a competitive procurement process, (2) was allegedly not an extension of the existing lease, and (3) did not allegedly yield cost savings of at least 10 percent below the market value of the rental property at the time of the extension.

**RESPONSE:** I don't remember exactly how and when I first became aware the project was not the subject of a competitive procurement process, but I don't think it was

*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

earlier than late September or later than October 3, 2013, when the Alaska Dispatch News (Dispatch) published an article. It was probably the Dispatch article that made me aware of it, but I can't be sure I was not aware of it before then. I also don't remember exactly when I first became aware the project was not a lease extension, but it was by the middle of October, 2013, after I had reviewed AS 36.30.083(a). The facts involved in tearing down the existing building to its steel frame and foundation, demolishing the adjacent old Empress Theatre, throwing the tenant out for over a year and building a new building made it obvious to me that it did not "extend" a real property lease. Similarly, I don't remember exactly when I became aware that the rent for the new Anchorage Legislative Information Office Building was well above market value, but it was by the middle of October, 2013. As a downtown landlord, in fact of the building adjacent to the new Anchorage Legislative Information Office Building, I was aware of market rents in the area.

**INTERROGATORY NO. 2:** Please describe WITH PARTICULARITY any and all actions you took in an effort to stop, question, dispute, or in any way challenge the Lease Extension or the procurement process that led to the execution of the Lease Extension - aside from filing this lawsuit on March 31, 2015.

**RESPONSE:** I had a discussion with Donald W. McClintock, attorney for 716 LLC, sometime shortly before October 11, 2013, about my concerns regarding damage to the Alaska Building and the lease being illegal. I indicated I was contemplating filing for an injunction to stop the project on that basis. I met with Mr. McClintock again on or around October 28, 2013, at which time I reiterated the project was illegal under AS 36.30.083(a).

*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

**INTERROGATORY NO. 3:** Please describe WITH PARTICULARITY any impediment that you claim prevented you from challenging the legality of the Lease Extension prior to March 31, 2015.

**RESPONSE:** The problem I was faced with was the Alaska Building was in great jeopardy from the construction project and I was very concerned that if I tried to obtain an injunction against the project moving forward and failed, there was a much higher likelihood of substantial damage, even to the point of the effective destruction of the Alaska Building. As it was, I had to hire an engineer to advocate for more protection of the Alaska Building. Mr. McClintock stated that he didn't think even I could afford the bond and while it is possible an injunction against commencement of the project was possible without posting a bond, I felt the risk of retaliatory damage to the Alaska Building was just too great to challenge the legality of the agreement at that time.

**INTERROGATORY NO. 4:** Please identify the "drastically different terms" contained in the Lease Extension, as alleged in page 6 of YOUR Memorandum in Support of Motion for Partial Summary Judgment: Not Extension, including but not limited to which of those "drastically different terms" causes the Lease Extension to not be an extension.

**RESPONSE:** Object because it is like asking what are the differences between a Yugo and a Lamborghini. Notwithstanding this objection, Plaintiff responds as follows:

Most of the sections of the lease have been replaced or drastically amended, to wit:

- Section 1 was replaced with a new section.
- Section 2 was replaced with a new section.
- Section 3 was replaced with a new section.

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*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

- Section 4 was replaced with a new section.
- Section 5 was replaced with a new section.
- Section 6 was replaced with a new section.
- Section 7 was replaced with a new section.
- Section 8 was replaced with a new section.
- Section 9 was replaced with a new section.
- Section 10 was replaced with a new section.
- Section 11 was replaced with a new section.
- Section 12 was replaced with a new section.
- Section 13 was replaced with a new section.
- Section 14 was replaced with a new section.
- Section 15 was replaced with a new section.
- Section 16 was replaced with a new section.
- Section 17 was replaced with a new section.
- Section 18 was replaced with a new section.
- The last sentence of Section 19A was replaced with the following:  

"The Lessor shall be responsible for completing the Renovations described in Exhibit "N prior to the Lessee accepting and taking occupancy of the Premises. After the Renovations have been completed and the Lessee has accepted and taken occupancy of the Premises, any subsequent alterations to the Premises agreed by the parties will be documented by separate agreement."
- Section 20 was deleted in its entirety.
- Section 21 was replaced with a new section.
- Section 22 was replaced with a new section.
- Section 23 was replaced with a new section.
- Section 24 was replaced with a new section.
- Section 25 was replaced with a new section.
- Section 30 was replaced with a new section.
- Section 31 was replaced with a new section.
- Section 33 was replaced with a new section.

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*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

- Section 34 was replaced with a new section.
- Section 35 was replaced with a new section.
- Section 36 was replaced with a new section.
- Section 37 was replaced with a new section.
- Section 39, as amended, was amended by deleting all content after the first paragraph.
- Section 41 was replaced with a new section.
- Section 42 was replaced with a new section.
- Section 43 was replaced with a new section.
- Section 46 was added.
- Section 47 was added.
- Section 48 was added.
- Section 49 was added.
- Section 50 was added.
- Section 51 was added.
- Section 52 was added.

The rent was drastically increased as was the per square foot rent.

The premises changed drastically, including the legal description with the inclusion of the adjoining property; the leased space going from 22,834 square feet net to 64,000 square feet gross.

The operating costs were drastically increased.

**INTERROGATORY NO. 5:** If you contend that the Lease Extension did not comply with either AS 36.30.020 or the Alaska Legislative Procurement Procedures, please describe **WITH PARTICULARITY** all facts supporting your contention.

**RESPONSE:** AS 36.30.020, requires that the procedures comply with AS 36.30.083(a) and the agreement does not in that it neither extends a real property lease nor

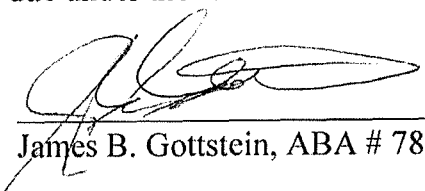
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*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

is it at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease.

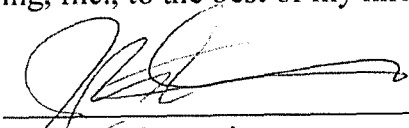
Dated October 5, 2015.

  
James B. Gottstein, ABA # 7811100

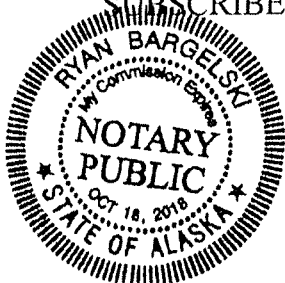
### VERIFICATION

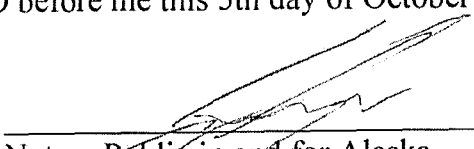
James B. Gottstein, being first duly sworn, deposes and states that I am the president of Alaska Building, Inc., the plaintiff in the above captioned litigation, I have read the above Responses to Interrogatories and believe to be true and complete based on the information available to Alaska Building, Inc., to the best of my knowledge and belief.

Dated October 5, 2015.

  
James B. Gottstein,  
President, Alaska Building, Inc.

SUBSCRIBED AND SWORN TO before me this 5th day of October 2015.

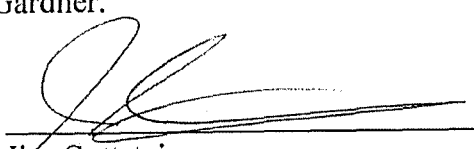


  
Notary Public in and for Alaska  
My Commission Expires: 10-18-18

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated October 5, 2015.

  
Jim Gottstein

LAW OFFICES OF  
JAMES B. GOTTSTEIN  
406 G STREET, SUITE 206  
ANCHORAGE, ALASKA  
99501

TELEPHONE  
(907) 274-7686  
FACSIMILE  
(907) 274-9493

*Responses to Legislative Affairs Agency's  
First Discovery Requests to Plaintiff*

---

**From:** Donald W. McClintock <dwm@anchorlaw.com>  
**Sent:** Wednesday, October 30, 2013 10:07 AM  
**To:** 'James B. Gottstein'  
**Cc:** Rebecca A. Windt; Heidi A. Wyckoff  
**Subject:** RE: Larger Issues

Jim,

Thanks for the clarification. As noted in our meeting, we are comfortable with the process that the agencies pursued.

Don

**Donald W. McClintock**  
**Ashburn & Mason, P.C.**  
1227 W. 9th Ave. Ste. 200  
Anchorage, AK 99501  
(907) 276-4331 (voice)  
(907) 277-8235 (fax)  
[www.anchorlaw.com](http://www.anchorlaw.com)

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---

**From:** James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]  
**Sent:** Wednesday, October 30, 2013 9:13 AM  
**To:** Donald W. McClintock  
**Cc:** [james.b.gottstein@gottsteinlaw.com](mailto:james.b.gottstein@gottsteinlaw.com)  
**Subject:** Larger Issues

Hi Don,

I am assuming your client is not going to work with me to fill in the blanks and sign the Indemnification Agreement I e-mailed last Friday, and we discussed Monday. As you know I have been very conflicted about even making a deal in light of what I learned about the project being a violation of state law. I don't really need anything in writing from Eric to launch the grenade, but gave you the impression you had a couple of days for him to get something in writing to me. Since I don't have any sense that your client is going to agree to the Indemnification Agreement, my moral conflict is resolved, but I do feel I should give you notice since I left the impression your client had through today.

When I met with you on Monday, I fully intended to pursue the criminal violation, but as I was writing the letter to Geraghty and Svobodny, I decided not to mention it. I am not trying to harm Mark; I just think the deal is outrageous and should be stopped.

James B. Gottstein  
Law Offices of James B. Gottstein  
406 G Street, Suite 206



Anchorage, AK 99501  
Tel: (907) 274-7686 Fax: (907) 274-9493  
e-mail: James.B. Gottstein@GottsteinLaw.Com



## LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

CORRECTED July 25, 2013: paragraph 3, line 1.

July 24, 2013

Donald W. McClintock  
Ashburn & Mason, P.C.  
1227 W. 9th Ave., Ste. 200  
Anchorage, AK 99501

Dear Don:

I thought the meeting on Monday in Anchorage was productive and advanced the process of addressing the issues related to the extension of the lease for 716 West Fourth Avenue. I received your letter yesterday, which explains that you represent the 716 West Fourth Avenue LLC. Thanks.

With regard to the questions in your e-mail regarding a full service, or triple-net lease, the final decision on the type of lease terms related to services and maintenance of the proposed building is a matter for decision by the Legislative Council Chairman and Executive Director Pam Varni. However, from my perspective, there are serious legal questions related to the Legislative Affairs Agency entering into a triple-net lease, driven primarily by risk management concerns. At a minimum, we cannot insure a leased building for damage that might occur as a result of any negligence related to our management responsibilities under a triple-net agreement. I am attaching a letter from Jeanne Mungle, Risk Manager, dated July 19, 2013, addressing the issue of state insurance for non-state owned facilities.

Also, as I mentioned to you in Anchorage on Monday, the agency has never entered into a triple-net agreement, and after Pam had a discussion with the state leasing manager, she discovered that neither has the Department of Administration. I don't have a solution for this insurance problem, and without some protection for both the Lessor and Lessee, a triple-net agreement does not seem possible, but I look forward to your response.

With regard to the Legislative Affairs Agency paying taxes under the Lease, we are not prepared to do so. We are unwilling to create precedent in our lease transactions establishing that taxes may be passed on directly to the legislature. By paying taxes, the legislature would essentially be indemnifying a Lessor and property owner from changes in the Mil Rate. The Legislative Affairs Agency is not willing to assume responsibility for directly paying taxes; therefore, we request that the Lessor incorporate annual taxes owed on the property into the monthly lease payments.

With regard to your client's concern that he be provided a reimbursement clause under the lease in the event that the legislature does not appropriate funds necessary to make the

Donald W. McClintock  
July 24, 2013  
Page 2


lease payment at the beginning of the lease, the following provision is the best reimbursement clause I believe we can provide under Alaska law:

The Lease is amended to add a new section to read as follows:

47. **REIMBURSEMENT** The Lessor and Lessee agree that the Lessor's sole remedy under the Lease, in the event that the 28th Alaska State Legislature does not appropriate funds necessary to pay the Lease payments under sec. 1 of the Lease for Alaska State Fiscal Year 2015 and that the Lease is terminated, that the Lessee shall pay, subject to appropriation by the Legislature, and subject to approval by the Legislative Council Committee, up to a maximum of \$1,500,000, for design, engineering, and renovations required under this Lease, providing that the Lessor can provide documentation satisfactory in the sole judgment of the procurement officer, to support the Lessor's claim. The Lessor agrees that if reimbursement is made by the Lessee under this section, that Lessor will provide to Lessee all plans, design, and engineering documents prepared by the Lessor or Lessor's contractors through the date the Lease was terminated.

I included this additional lease term in a Word version of the draft lease we provided to you on Monday in Anchorage for discussion purposes. I am sure there will be further discussion of the matters contained in this letter, and the draft lease proposal in the upcoming period. I look forward to your response.

Sincerely,



Doug Gardner  
Director

DDG:Ind  
13-299.Ind  
Attachments

cc: Pamela Varni  
Executive Director  
Legislative Affairs Agency

Representative Mike Hawker  
Chair  
Alaska Legislative Council



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## Politics

# Legislature reconsiders its Anchorage building as it hunts for more cuts

 Author: Nathaniel Herz  Updated: July 3  Published March 28, 2015

JUNEAU -- State lawmakers are exploring ways to reduce their own budget more deeply than an earlier version of their spending plan by cutting costs for their offices around the state -- including their pricey, recently remodeled Anchorage space.

A Senate panel met Friday and proposed cutting an additional \$1.5 million, or 2 percent, from the Legislature's \$75 million budget beyond a 4.5 percent initial cut already passed by the House.

The reductions are expected to go even deeper when the full Senate Finance Committee takes up the budget next week.

In interviews Friday, two senators said they were exploring further cuts to their workspaces outside the Capitol, known as legislative information offices or LIOs.

Without cuts, the state will pay some \$5.6 million for more than 30 legislative office spaces next year, according to a breakdown provided by a legislative employee. Those costs range from some \$4 million for the Anchorage LIO to \$300,000 for space in Fairbanks to \$30,000 for an office in Kotzebue rented from the Iditarod dog musher John Baker.

Sen. Kevin Meyer, R-Anchorage, said he met with Sen. Gary Stevens, R-Kodiak, Sen. Charlie Huggins, R-Wasilla, and a legislative lawyer Friday morning to examine the state's contract for its Anchorage LIO, asking about "what kind of options we have."

**Exhibit J | Page 1 of 3**

"Office space is becoming more available now than what was available, say, a year or two ago," he said. "Things are changing."

The cost of the Anchorage LIO has drawn scrutiny over the past two years after the Legislature agreed to a new 10-year lease of a renovated space in a deal negotiated by Rep. Mike Hawker, R-Anchorage, when he was chairman of the Legislative Council for the previous two years. Critics have mocked the renovated building as the "Taj Mahawker."

Annual payments went up to \$4 million from \$682,000 when the Legislature moved into the space in January, with costs per square foot more than double market rates.

Stevens, the Kodiak senator, is now chairman of the Legislative Council, the body that handles lawmakers' internal business and budgets.

In an interview Friday, he wouldn't reveal what kind of changes he was examining for the Anchorage office space, but he said he was given the job of cutting the Legislature's budget.

"LIOs are a major part of that budget, so we've been looking at all sorts of options: entirely closing some of the smaller LIOs, taking other LIOs and reducing them to 50 percent, open only half the time," he said. "We're certainly looking at the Anchorage LIO as well, trying to find out what options are available to us."

The Legislature's lease for its Anchorage space is subject to lawmakers appropriating money to pay for it. Asked if the Legislature had the ability to opt out, Meyer responded: "You can always get out of every lease -- it's just at what cost, and any consequences."

"I don't know that I'm comfortable enough to say we can easily get out of this without lengthy legal expense involved," he said. "And then is it even worth it? How much do we save?"

Mark Pfeffer, the Anchorage LIO's developer, didn't return phone calls Friday.

One alternative for legislative space in Anchorage could be the state-owned Atwood Building downtown, where Gov. Bill Walker and some agencies already have offices.

The building does not currently have room for the legislative offices but the space is "always in flux," said Leslie Ridle, deputy commissioner at the Department of Administration who's responsible for the Division of General Services, which manages state leasing and facilities.

"It's like a little puzzle," Ridle said in a phone interview. "Do I know exactly if there's enough room for every single piece of the Legislature to fit in? I don't know that there is right this minute, but it's a moving target."

Ridle wouldn't say whether she'd discussed the use of the space with the Legislature, referring questions to legislative officials.

#### About this author

#### Nathaniel Herz

Nathaniel Herz covers politics and general assignments.



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Lower My Bills

Exhibit J | Page 3 of 3

## Politics

# Senate committee strips funds for Legislature's new Anchorage offices

 Author: Nathaniel Herz  Updated: July 3  Published April 2, 2015

JUNEAU -- The Alaska Senate Finance Committee is proposing to strip funding from the Legislature's lease for its newly remodeled Anchorage offices, forcing legislators and their staff to move to another building owned by the state.

The state would save some \$3.4 million a year -- and \$33.5 million over the life of the pricey lease -- if the Legislature moves into the Atwood Building in downtown Anchorage, according to documents attached to a state budget amendment submitted at a finance committee hearing Thursday.

The state's existing lease for its remodeled office building runs for 10 years.

Sen. Pete Kelly, R-Fairbanks, proposed the budget amendment. It passed without objection.

The budget, however, still has to pass the full Senate and also needs to be reconciled with an earlier version passed by the House. House members may be less likely to support the plan to move the Legislature's Anchorage offices since the current lease for their remodeled building was negotiated by one of their colleagues, Rep. Mike Hawker, R-Anchorage.

Critics have derided the remodeled building as the "Taj Mahawker."

The Senate's proposal doesn't imply the Legislature is being cheated in the remodeling and it isn't an attempt to get the building's developers, Mark Pfeffer and Bob Acree, to lower their price, said Sen. Gary Stevens, R-Kodiak, who's been reviewing the lease.

Stevens chairs the Legislative Council, the committee of House and Senate members that deals with the Legislature's internal business and budgets. Hawker had been the chairman in the previous Legislature.

"It's a beautiful building. It's first class," Stevens said in an interview, referring to the Legislature's office space on Fourth Avenue. "The question in the end is: Should we pay for a Cadillac when we could pay for a Ford?"

The Legislature's lease with Acree and Pfeffer is subject to lawmakers appropriating money to pay for it.

"Does that mean that we cannot be sued? No," Stevens said.

Pfeffer didn't return a phone message Thursday. In a prepared statement sent by a spokeswoman, Pfeffer said the developers had worked "above board, diligently and cooperatively to deliver public building space that provides accessibility to all Alaskans."

"After delivering the facility as requested, we are disappointed that the committee now chooses an alternate direction," the statement said. "We believe that breaking agreements and financial commitments potentially impact the state's credit negatively, and therefore should be carefully considered. We have offered several ways to work with the Legislature to look for cost savings and hope that through the upcoming budget process, the Legislature will consider the commitments they made and choose to find a solution that works for all parties."

The Legislature's lease for its Anchorage offices -- which can house about half of the state's 60 senators and representatives -- spiked to \$4 million per year from \$682,000 when members moved back into the renovated building in January.

Hawker negotiated the no-bid lease for the offices after the Legislature searched for new space for more than 10 years.

A commercial real estate broker unaffiliated with the Legislature says it's paying two or three times as much as it would for comparable space elsewhere. Hawker has said there was no other property that could offer a competing proposal and a state appraiser found that legislative offices are too specialized to be compared to other spaces.

The renovated building is glass-skinned, with two glass-walled elevators on the outer edges. Toilets are in rooms, not stalls, and bathroom trash cans -- with a listed price of \$200 each -- have lids that automatically open and close with the wave of a hand.

Stevens said he was reviewing the lease in light of the state's multibillion-dollar budget deficit, with the Senate Finance Committee proposing 10 percent cuts in unrestricted general fund spending on state agencies.

"Almost every aspect of our budget has been touched," Stevens said. "And the question is: How much of a cut do we want to take to the Legislature itself?"

The Senate Finance Committee's budget plan would cut the Legislature's budget by 7 percent, or \$5.7 million. That figure includes \$1.4 million in savings from the proposed move to the Atwood Building.

The amendment passed by the committee Thursday funds the lease for the renovated building through the end of January. Then, the Legislature would move into the Atwood Building after the end of their 2016 session in April.

All options are still open, however, when it comes to the Legislature's Anchorage space, Stevens said. That includes remaining in the renovated building or even buying it, though that hasn't been explored recently, he said.



Those options will be examined and debated during the conclusion of the Legislature's budget process, with its three-month session currently scheduled to end April 19.

Following the finance committee's passage of its budget Thursday, the full Senate must approve the package, which will likely happen Friday. Then, members will have to negotiate with the House, which already passed a



budget that includes full funding for the existing lease for the Legislature's Anchorage offices.

It's unclear how hard the House will fight to stay in the renovated building, if at all, but Stevens acknowledged "lots of differences of opinion on what we should be doing." A staff member for Hawker said he wouldn't comment on the Senate's proposal.

House Speaker Mike Chenault, R-Nikiski, said in a Thursday morning news conference that he didn't know much about the plan and would wait to see what the Senate proposed.

"We've got to look at it and vet it and see what we think is the best thing," Chenault said.

After the plans were discussed in a closed executive session of the Legislative Council, Chenault declined to comment further.

#### About this author

##### Nathaniel Herz

Nathaniel Herz covers politics and general assignments.



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**ALASKA STATE LEGISLATURE  
LEGISLATIVE COUNCIL  
APRIL 13, 2015  
5:02 PM  
Approved May 26, 2015**

**MEMBERS PRESENT**

Senator Gary Stevens, Chair  
Representative Bob Herron, Vice Chair  
Senator John Coghill  
Senator Lyman Hoffman  
Senator Charlie Huggins  
Senator Anna MacKinnon  
Senator Lesil McGuire, alternate  
Senator Kevin Meyer  
Representative Mike Chenault  
Representative Craig Johnson  
Representative Sam Kito  
Representative Charisse Millett  
Representative Mark Neuman  
Representative Steve Thompson, alternate

**MEMBERS ABSENT**

Senator Peter Micciche  
Representative Mike Hawker

**AGENDA**

ANCHORAGE LIO

**SPEAKER REGISTER**

5:02:52 PM

- I. **CHAIR GARY STEVENS** called the Legislative Council meeting to order at 5:05 p.m. in Room 519 (House Finance) of the State Capitol. Present at the call were Senators Meyer, Coghill, Hoffman, Huggins, MacKinnon, and Stevens; Representatives Chenault, Johnson, Kito, Millett, Neuman, Herron, and Thompson, alternate member. Senator McGuire, alternate member, joined the meeting during the statement of the Chair. Senator Micciche and Representative Hawker were absent.

## II. **ANCHORAGE LIO**

CHAIR STEVENS thanked everyone for being present and said this was a follow-up meeting after having a couple of executive sessions. The conference committee members rightly said they would like to have a firm Legislative Council recommendation and he believed it was only fair that Legislative Council make their position as clear as possible in this matter. He said as you all know we're facing enormous financial problems, budget reductions, this year and quite likely next year as well. They realize the Legislature must reduce its cost of doing business as well as all the other agencies and departments that have been reduced. That's why we are carefully considering the Anchorage office building lease just a matter of cost reduction during a time of quite serious financial stress. He said the motion that will be presented to Council recommends that we fund the lease for FY 2016 for the Anchorage LIO. This gives us time to negotiate a purchase price with the owners of the Anchorage LIO. It gives us the time to get it right.

Chair Stevens said we will attempt to enter into negotiations with the owners for purchase of the building and the land. As you know, it's very important to many members around this table that the building and the land be together. He said we will work with Alaska Housing Finance Corporation on the purchasing of the building and we want to engage professionals to negotiate this contract with us. He has spoken with the owners' representatives and they indicated the owners would still be interested in selling the Anchorage LIO but, of course, we have to negotiate for the land as well as the building.

Chair Stevens said that, eventually, this matter will come back to the Legislative Council with a purchase price. If the Council agrees with the purchase price, than the

Legislature will remain in the Anchorage LIO pending legislative action. If the Council does not agree with the purchase price and if the owners have not been willing to negotiate than we really must consider use of the non-appropriation clause in the lease contract for the 2017 budget year, and evaluate state-owned office building space that might be available to the Legislature. He said that the Commissioner of Administration has been enormously helpful, forthcoming, willing to work with us, and patient in this entire process.

5:06:23 PM

VICE CHAIR HERRON moved and asked unanimous consent that, due to the state's serious and sudden revenue shortfall and deepening budget concerns, Legislative Council instructs the operating budget conference committees to go with the House numbers for 716 W 4<sup>th</sup> Avenue (Anchorage LIO) for FY 2016 to provide Legislative Council a period of time to analyze its options and directs the Chair of Legislative Council report back on the following:

1. Purchasing 716 W 4<sup>th</sup> Avenue building and land;
2. Requesting advice from the Alaska Housing Finance Corporation (AHFC) on purchasing 716 W 4<sup>th</sup> Avenue; and
3. Evaluating state-owned office space for the Legislature.

CHAIR STEVENS objected for purposes of discussion.

REPRESENTATIVE KITO said he did have a concern. He said that we have a unique opportunity with the availability of office space in the Atwood Building. We do know that the cost savings will be significant even in the first year. He said he had a concern that when the Legislature is cutting, or proposing to cut, the education budget; when the Legislature is cutting many aspects of early childhood education; proposing to cut public radio; that we as a Legislature need to also look at our house and find ways where we can be efficient. He said he recognized that while the building that we do have is the building that we asked for, that the building we do have is very nice space for the Legislature, he does have a concern that as the Legislature is telling everybody else to tighten up their belts because we don't have a lot of money that we as a Legislature will be occupying the most expensive building in Anchorage. He said he has concerns about the process going forward because we do end up with a situation where we may, as a purchase, spend almost as much as we would on a 10-year lease. We do have a unique opportunity that he hoped would be available in a year but there obviously is a

possibility it would not be because he is sure the State would like to fill the space that they have vacant at this time.

CHAIR STEVENS said that, in response to that, we are all concerned about the legislative budget. We have made other, quite substantial, cuts to the legislative budget. It was very difficult, in the time we had, to move forward on this particular issue. It is a complex issue and he hesitates to ask Council to make a snap decision without having all the facts in front of Council.

SPEAKER CHENAULT commended the Chair and Pam [Varni], etc., for trying to look at ways to control the spending of the Legislature and the money that we're in charge of. He said he thinks all of us know that if we want to talk and to discourage other areas of the state, we can all go through that and we can pick out some little program that we think is near and dear to folks in your district. He said he thought it was commendable that Legislative Council move forward with the program that the Chair discussed. He said there are many concerns around this table and across this state on if the Legislature failed to approve the rental agreement that we have with the building owners on 4<sup>th</sup> Avenue, what type of liability does that open the Legislature up to. He said he knew we had heard from our lawyer, Doug Gardner, and his staff, who have given Council their best insights but we don't know if that is exactly what would happen or not. He said he thinks that Council owes it to the Legislature to make sure that Council is doing the right thing for Alaska and he doesn't know if buying that building is the best option that is out there; it was discussed last year and it may have been a great time to buy it last year. He said he thinks it's a good move to put AHFC in charge of it because he thinks AHFC can bring us back a valued report on whether that makes sense for the State to own a building versus leasing or renting another building. He said he thinks the Chair was on the right track, he thinks Council needs to make sure that the move we make is the correct move and that we are in charge of the people of Alaska's money so with that, he said he appreciated all the Chair's work.

REPRESENTATIVE MILLETT said she wanted to echo the Speaker's comments in thanking Pam [Varni] and Katrina [Matheny], of the Chair's staff, in doing all the hard work. She said she thinks that we are doing exactly what we we're doing with every piece of the budget - we are looking at our own house. She said we've been looking at our own

house for a couple of months on this issue. She said that Council should do due diligence as the Chair has suggested just like we do due diligence on every other budget cut that the Legislature makes. She said she thinks further on this issue that the liability that we would incur if we do not negotiate the lease in a different way or break the binding agreement after a building that we told the builder exactly what we wanted, the timeframe that we wanted it in, so she said she thinks it will give Council a lengthy time to talk amongst ourselves and with other experts in the field about what it means to break that contract; if we'd get into a deeper fiscal problem if we got into a long-term lawsuit over this issue, which she said would not be good for the State either.

Representative Millett asked if, along with evaluating at the government-to-government transition to the Atwood Building, the Chair would also be looking at other avenues in Anchorage for cheaper lease space, such as the Sunshine Mall and a couple other buildings that were available at a lower lease rate than the Atwood Building.

CHAIR STEVENS said that in previous discussions he had with Representative Millett, she had mentioned city-owned Municipal properties and he felt those should certainly be included in the other options. He said the motion does not include going out for an RFP (Request For Proposals) in looking for a best price. In dealing with the Atwood Building specifically, he didn't think anything could compare to that in the low price we would get, but he said he would certainly be willing to look at others along the way. Representative Millett said she was satisfied with that.

REPRESENTATIVE HERRON said that he appreciated this approach. He said the analogy he would use is that Council is not going to jump off the building, we're going to take the stairs down and do due diligence.

There being no further discussion, a roll call vote was taken.

YEAS: Meyer, Coghill, Hoffman, Huggins, MacKinnon,  
McGuire, Chenault, Johnson, Millett, Neuman,  
Thompson, Herron, Stevens

NAYS: Kito

The motion passed 13-1.

There being no further business before the committee, the  
Legislative Council meeting was adjourned at 5:15 p.m.

5:15:29 PM



# ALASKA STATE LEGISLATURE LEGISLATIVE COUNCIL

## MEMORANDUM

### CHAIR:

Sen. Gary Stevens

### VICE CHAIR:

Rep. Bob Herron

### SENATE MEMBERS:

President Kevin Meyer  
Sen. John Coghill  
Sen. Lyman Hoffman  
Sen. Charlie Huggins  
Sen. Anna MacKinnon  
Sen. Peter Micciche  
Sen. Lesil McGuire – alt

### HOUSE MEMBERS:

Speaker Mike Chenault  
Rep. Mike Hawker  
Rep. Craig Johnson  
Rep. Sam Kito  
Rep. Charisse Millett  
Rep. Mark Neuman  
Rep. Steve Thompson – alt

### COMMITTEE CONTACT:

#### Session/Interim:

State Capitol 429  
Juneau, AK 99801-1182  
(907) 465-4925

#### Committee Aide:

Katrina Matheny  
(907) 465-4713

TO: Legislative Council Members

FROM: Senator Gary Stevens, Chair  
Legislative Council

DATE: November 24, 2015

SUBJECT: Anchorage LIO Office Space Report

At the April 13, 2015 Legislative Council meeting there was general agreement that, in the face of enormous financial problems, the Legislature must reduce its cost of doing business as is being done in all other State agencies and departments. Specifically, the Council voted to direct the Chair to analyze options for legislative office space in Anchorage and report back to the full Council for consideration of the following:

1. Purchasing 716 W. 4th Avenue Building and Land;
2. Request Bonding Costs from Alaska Housing Finance Corporation (AHFC) to purchase 716 W. 4th Avenue; and
3. Evaluate State-Owned Office Space.

This memo and the attached documents comprise my report to Council. In working with the Departments of Revenue and Administration, as well as AHFC, the LAA and I have put together an Anchorage Legislative Offices Cost Comparison (summary attached). Below are five scenarios that compare annual cash outlays over a 10 year period (2016-2025) not including tenant improvement costs:

1. Continue Current Lease 716 W. 4<sup>th</sup> Avenue: \$40,320,000;
2. Purchase 716 W. 4th Ave. funded by AHFC Issuing Fixed-Rate Bonds Plus Operating Costs: \$48,850,000;
3. Purchase 716 W. 4th Ave. Issuance of Variable Rate Certificates of Participation Plus Operating Costs: \$44,614,600;
4. Cash Purchase of 716 W. 4th Ave.: (\$37,950,000 plus operating costs) \$43,200,000; or
5. Move to State-Owned Space at the Atwood Building: \$6,647,760.

Negotiations have been ongoing over the interim between the managing owner of 716 W. 4th Ave., Mark Pfeffer; his attorney Don McClintock with Ashburn & Mason, P.C.; Serena Carlsen, our outside real estate attorney with Stoel Rives, LLP; myself and Council Chair staff Katrina Matheny; as well as, Pam Varni, Executive Director and Doug Gardner, Legal Director of the Legislative Affairs Agency.

I am ready to discuss in detail the five different scenarios with the full Council and any other interested Members.

Attachments



## ANCHORAGE LEGISLATIVE OFFICES COST COMPARISON

### Scenario #1: Continue Current Lease at 716 W. 4<sup>th</sup> Avenue

**Action Required:** The Legislature needs to fully fund the Legislature State Facilities Rent Component every year for the remainder of the original 10 year lease, which expires on May 31, 2024. For comparison purposes, all the scenarios, including this one, are 10 year projections. Costs per square foot are based on usable space of 45,371 sq. ft. We have a total of 86 parking spaces.

Costs to Occupy 716 W. 4th Ave. at Current Lease Terms, Fiscal Years 2016-2025			
Fiscal Year	Lease Amount	Operating Expenses	Total Annual Cost
2016	\$3,379,656	\$652,344	\$4,032,000
2017	\$3,379,656	\$652,344	\$4,032,000
2018	\$3,379,656	\$652,344	\$4,032,000
2019	\$3,379,656	\$652,344	\$4,032,000
2020	\$3,379,656	\$652,344	\$4,032,000
2021	\$3,379,656	\$652,344	\$4,032,000
2022	\$3,379,656	\$652,344	\$4,032,000
2023	\$3,379,656	\$652,344	\$4,032,000
2024	\$3,379,656	\$652,344	\$4,032,000
2025	\$3,379,656	\$652,344	\$4,032,000
<b>Total</b>	<b>\$33,796,560</b>	<b>\$6,523,440</b>	<b>\$40,320,000</b>
Average Annual Cost			<b>\$4,032,000</b>
Total Monthly Costs per Usable Square Foot			<b>\$7.41</b>

Total 10 Year Lease & Operating Expenses	<b>\$40,320,000</b>
Tenant Improvement Costs	<b>\$7,500,000</b>
Total Monthly Costs per Usable Sq. Ft. Including Tenant Improvements	<b>\$8.78</b>

## Scenario #2: Purchase 716 W. 4<sup>th</sup> Avenue Funded by AHFC Issuing Fixed-Rate Bonds

**Action Required:** The Legislature needs to pass a stand-alone bill to enable AHFC to finance the purchase of this building. Among the financing options available to the Legislature when it purchases or constructs facilities is the issuance of debt in the form of bonds sold to investors. Alaska's current credit profile would enable the issuance of bonds with a 10-year maturity at a fixed rate of approximately 2.16 percent. Summing all annual expenditures shows total annual costs of approximately \$4.8 million. This scenario is based on a usable space estimate of 45,371 square feet. A building manager position has been factored in this scenario. The Legislature would own an asset and be responsible for all ongoing maintenance and operating costs of this building. We have a total of 86 parking spaces.

Cost to Purchase 716 W. 4th Ave. by Issuing Bonds: Average Annual Costs, Fiscal Years 2016-2025				
Fiscal Year	Building Purchase	Debt Service Interest	Operating Expenses	Total Annual Cost
<i>Cost of Bond Issuance and Administration</i>				<i>\$850,000</i>
2016	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2017	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2018	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2019	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2020	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2021	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2022	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2023	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2024	\$3,795,000	\$480,000	\$525,000	\$4,800,000
2025	\$3,795,000	\$480,000	\$525,000	\$4,800,000
<b>Total</b>	<b>\$37,950,000</b>	<b>\$4,800,000</b>	<b>\$5,250,000</b>	<b>\$48,850,000</b>
Average Annual Cost				<b>\$4,885,000</b>
Total Monthly Costs per Usable Square Foot				<b>\$8.97</b>

Total to Purchase & Operating Expenses	<b>\$48,850,000</b>
Tenant Improvement Costs	<b>\$7,500,000</b>
Total Monthly Costs per Usable Sq. Ft. Including Tenant Improvements	<b>\$10.35</b>

### Scenario #3: Purchase 716 W. 4<sup>th</sup> Avenue via Issuance of Variable Rate Certificates of Participation

**Action Required:** The Legislature would need to pass a stand-alone bill outlining the project, cost, annual payment and total payments. With variable rate securities, the interest rate paid on bonds is reset periodically for the following week, month, or year. This has the effect of resetting the interest rate every so often on the short (lower interest rate) end of the yield curve. As a result, the Legislature would pay only the short term interest rate rather than the fixed long-term blended rate and will pay a lower rate at the point of issuance. The risk with a variable rate is as interest rates rise, the state's credit quality diminishes, or there is market dislocation that results in the interest rate changing from one year to the next. In this era of historically low interest rates, it appears reasonable to expect increases in rates over the life of the securities; however, attempting to predict the timing or amount of such increases would be purely speculative. As a result, the figures below are shown at a flat interest rate of 0.6 percent (the current variable rate available), and is therefore likely the minimum cost scenario. A building manager position is factored in this scenario. Costs per square foot are based on usable space of 45,371 sq. ft. The Legislature would own an asset and be responsible for all ongoing maintenance and operating costs of this building. We have a total of 86 parking spaces.

<b>Cost to Purchase 716 W. 4th Ave. by Issuing Variable Rate Certificates of Participation: Average Annual Costs over Fiscal Years 2016-2025</b>				
<b>Fiscal Year</b>	<b>Principal</b>	<b>Debt Service Interest</b>	<b>Operating Expenses</b>	<b>Total Annual Cost</b>
<i>Approximate Cost of COP Issuance and Administration</i>				<i>\$265,000</i>
<b>2016</b>	\$3,695,000	\$216,615	\$525,000	\$4,436,615
<b>2017</b>	\$3,715,000	\$194,385	\$525,000	\$4,434,385
<b>2018</b>	\$3,740,000	\$172,020	\$525,000	\$4,437,020
<b>2019</b>	\$3,760,000	\$149,520	\$525,000	\$4,434,520
<b>2020</b>	\$3,785,000	\$126,885	\$525,000	\$4,436,885
<b>2021</b>	\$3,805,000	\$104,115	\$525,000	\$4,434,115
<b>2022</b>	\$3,830,000	\$81,210	\$525,000	\$4,436,210
<b>2023</b>	\$3,850,000	\$58,170	\$525,000	\$4,433,170
<b>2024</b>	\$3,875,000	\$34,995	\$525,000	\$4,434,995
<b>2025</b>	\$3,895,000	\$11,685	\$525,000	\$4,431,685
<b>Total</b>	<b>\$37,950,000</b>	<b>\$1,149,600</b>	<b>\$5,250,000</b>	<b>\$44,614,600</b>
<b>Average Annual Cost</b>				<b>\$4,461,460</b>
<b>Total Monthly Costs per Usable Square Foot</b>				<b>\$8.19</b>

<b>Total to Purchase &amp; Operating Expenses</b>	<b>\$44,614,600</b>
<b>Tenant Improvement Costs</b>	<b>\$7,500,000</b>
<b>Total Monthly Costs per Usable Sq. Ft. Including Tenant Improvements</b>	<b>\$9.57</b>

#### Scenario #4: Purchase 716 W. 4<sup>th</sup> Avenue

**Action Required:** The Legislature would appropriate in the capital budget \$37,950,000 to go toward the purchase price of \$37,000,000 plus the estimated cost of \$950,000 prepayment penalty of the landlord for his loan of \$28,000,000. The Legislature would own an asset and be responsible for all ongoing maintenance and operating costs of this building. The Legislature would not be reimbursing the landlord for property taxes or insurance once we are owners. A building manager position is factored in this scenario. We have a total of 86 parking spaces.

<b>Cost to Purchase 716 W. 4th Ave. through Single Appropriation with Occupancy Costs, Fiscal Years 2016-2025</b>			
<b>Fiscal Year</b>	<b>Building Purchase</b>	<b>Operating Expenses</b>	<b>Total Annual Cost</b>
<b>2016</b>	\$37,950,000	\$525,000	\$38,475,000
<b>2017</b>		\$525,000	\$525,000
<b>2018</b>		\$525,000	\$525,000
<b>2019</b>		\$525,000	\$525,000
<b>2020</b>		\$525,000	\$525,000
<b>2021</b>		\$525,000	\$525,000
<b>2022</b>		\$525,000	\$525,000
<b>2023</b>		\$525,000	\$525,000
<b>2024</b>		\$525,000	\$525,000
<b>2025</b>		\$525,000	\$525,000
<b>Total</b>	<b>\$37,950,000</b>	<b>\$5,250,000</b>	<b>\$43,200,000</b>
<b>Average Annual Cost</b>			<b>\$4,320,000</b>
<b>Total Monthly Costs per Usable Square Foot</b>			<b>\$7.93</b>

<b>Total To Purchase &amp; Operating Expenses</b>	<b>\$43,200,000</b>
<b>Tenant Improvement Costs</b>	<b>\$7,500,000</b>
<b>Total Monthly Costs per Usable Sq. Ft. Including Tenant Improvements</b>	<b>\$9.31</b>

## SCENARIO #5: Move to State-Owned Space at the Atwood Building

**Action Required:** Non appropriation of the lease with 716 W. 4<sup>th</sup> Avenue and enter into a State lease with the Department of Administration for the Atwood Building. Of the total of 838 parking spots available in the Linny Pacillo parking facility, we would be paying for 84 parking spots based on our square footage. There are also 80 underground parking spots reserved for Legislators on a first come, first served basis at the Atwood Building. There are an additional 266 spots available on a first come, first served basis located in Blocks 102 and 79. Figures are based on per sq. ft., per month, costs of \$1.5375 for office space and of \$0.3091 for parking, as quoted by Tanci Mintz, State Leasing and Facilities Manager. At 716 W. 4<sup>th</sup> Avenue we previously had 811 sq. ft. of basement space. After the remodel there is 10,080 gross sq. ft. and 8,048 usable sq. ft. of basement space that we are not utilizing. We will not have basement space at the Atwood Building. We also have extra offices at 716 W. 4<sup>th</sup> that we are not using and will not have at the Atwood.

Prospective Lease of Office Space in the Atwood Building, Fiscal Years 2016-2025			
Fiscal Year	Office Lease 30,000 sq. ft. usable space	Parking 84 parking spaces	Total
2016	\$553,500	\$111,276	\$664,776
2017	\$553,500	\$111,276	\$664,776
2018	\$553,500	\$111,276	\$664,776
2019	\$553,500	\$111,276	\$664,776
2020	\$553,500	\$111,276	\$664,776
2021	\$553,500	\$111,276	\$664,776
2022	\$553,500	\$111,276	\$664,776
2023	\$553,500	\$111,276	\$664,776
2024	\$553,500	\$111,276	\$664,776
2025	\$553,500	\$111,276	\$664,776
<b>Total</b>	<b>\$5,535,000</b>	<b>\$1,112,760</b>	<b>\$6,647,760</b>
Average Annual Cost			<b>\$664,776</b>
Total Monthly Costs per Usable Square Foot			<b>\$1.85</b>

Total 10 Year Lease & Operating Expenses	\$6,647,760
Tenant Improvement Costs For Atwood Building	\$3,500,000
Tenant Improvements Lost From 716 W. 4 <sup>th</sup> Avenue	\$7,500,000
Total Monthly Costs per Usable Sq. Ft. Plus Operating Costs	\$4.90

**ALASKA STATE LEGISLATURE  
LEGISLATIVE COUNCIL  
MARCH 31, 2016  
5:05 PM  
Approved August 3, 2016**

**MEMBERS PRESENT**

Senator Gary Stevens, Chair  
Representative Bob Herron, Vice Chair  
Senator John Coghill  
Senator Lyman Hoffman  
Senator Charlie Huggins  
Senator Anna MacKinnon  
Senator Kevin Meyer  
Senator Peter Micciche  
Representative Mike Chenault  
Representative Craig Johnson  
Representative Sam Kito  
Representative Charisse Millett  
Representative Mark Neuman  
Representative Steve Thompson, alternate

**MEMBERS ABSENT**

Representative Mike Hawker

**OTHER MEMBERS PRESENT**

Senators Egan and Olson; Representatives Claman, Colver, Josephson, LeDoux, Ortiz, Spohnholz, Tarr, Tuck and Wool

**AGENDA**

ANCHORAGE LIO - EXECUTIVE SESSION

**SPEAKER REGISTER**

Sheldon Fisher, Commissioner, Department of Administrative Services  
Mark Pfeffer, Pfeffer Development and 716 West Fourth Avenue, LLC  
Don McClintock, Ashburn & Mason P.C.

5:05:15 PM

I. **CHAIR GARY STEVENS** called the Legislative Council meeting to order at 5:05 p.m. in Room 532 (Senate Finance) of the State Capitol. Present at the call were Senators Meyer, Coghill, Hoffman, Huggins, MacKinnon, Micciche, and Stevens; Representatives Chenault, Johnson, Kito, Millett, Neuman, Thompson, alternate member, Drummond, alternate member, and Herron. Representative Hawker was absent.

II. **ANCHORAGE LIO - EXECUTIVE SESSION**

CHAIR STEVENS noted for members that this meeting was to address the motion passed by Legislative Council at the December 19, 2015, meeting; specifically, "...that Legislative Council advises the Legislature not to appropriate for the 716 W Fourth Avenue lease pending the outcome of the currently pending litigation or unless negotiations between counsel for the Legislature and a State entity within the next 45 days result in a competitive cost on a per square foot of usable space basis." Based on that motion, Council is meeting today to discuss a proposal by the owner of 716 W 4th Avenue. He said that before Council hears from Mr. Pfeffer, he wanted to give time to the commissioner of Administrative Services who has to leave shortly to catch a plane. He asked that Commissioner Fisher address the basic question of whether space at the Atwood Building is still available to the Legislature.

COMMISSIONER SHELDON FISHER confirmed that space in the Atwood Building continues to be available to the Legislature. He said that the space totals approximately 34,690 square feet, and it would consist of the area that was formerly the Diane Restaurant on the first floor, the public meeting room, and two floors in the building as well as some space on the 19th floor. In terms of availability, which assumes that a final decision and an RSA is given by early May, the space should be ready early in January 2018. He said the space on the first floor, the public meeting space, as well as some space on the 19th floor could be made available sooner, approximately seven months after the RSA is granted.

SENATE PRESIDENT MEYER asked for an estimate of what it would cost to do the build-outs for the Legislature.

COMMISSIONER FISHER said that the build-out was estimated at \$3.5 million, did not include costs associated with

moving the Legislature, and assumed that existing fixtures, furniture and equipment can be repurposed and moved from the current office space to the Atwood.

SENATE PRESIDENT MEYER followed up to ask if there were other state leases around the City of Anchorage that would be expiring soon and whether those employees could be moved to the Atwood.

COMMISSIONER FISHER said that if the Legislature does not take the space, it will be filled with other Executive Branch tenants.

REPRESENTATIVE KITO asked if temporary space was available on the second floor of the Atwood that could be used in the transition.

COMMISSIONER FISHER said that while the space on the second floor was vacant, their expectation was that some of that space would be used to effectuate the rest of the build-out, so would not really be available until early 2018.

CHAIR STEVENS said that currently during the interim there are approximately a dozen people that work in the Anchorage legislative offices - about six LIO staff, three in Ethics, and maybe three to four legislative offices have staff present during the interim; about a dozen folks altogether.

SENATOR MICCICHE followed up on Senator Meyer's question about other State offices moving into the Atwood to ask if such a move would facilitate a savings for the State.

COMMISSIONER FISHER agreed that certainly there would be a savings. The commercial lease rate in Anchorage tends to be a little over \$3.00 per square foot; he said they haven't defined precisely who would relocate to the Atwood, so he couldn't speak to the exact savings. As leases were terminated and employees moved to the Atwood, there would be a savings as the Atwood Building tends to be closer to \$1.80 per square foot. In response to a question by Speaker Chenault, Commissioner Fisher reiterated that the entire renovation would be finished early in January 2018 and would expect that with the move, the Legislature would be occupying the space by the end of January 2018.

SENATOR MICCICHE asked if it was possible to achieve renovations for a lower cost than the estimated \$3.5 million.



COMMISSIONER FISHER said that it was possible to do fewer renovations to bring down the cost. He said the estimates were pro forma; they haven't gone out to bid, haven't tried to negotiate more favorable rates than they have experienced in the past, but for budgetary purposes, they are suggesting a figure of \$3.5 million.

CHAIR STEVENS thanked Commissioner Fisher for being available to answer questions and for being excellent to work with.

Chair Stevens said that members should have received the report and addendum from Navigant. He said he had hoped there would be a purchase price that would be comparable to moving to the Atwood Building, and said that they, including Legislative Council's attorneys, Doug Gardner and Serena Carlsen with Stoel Rives, came up with a figure of \$32,500,000, which he shared with the owners; and they came back with a counter figure of \$35,450,000. They had a follow-up meeting and the owners put forth a new purchase price of \$33,975,000. He noted Mr. Pfeffer was here today to discuss the purchase price with Legislative Council.

MARK PFEFFER introduced himself and his attorney Don McClintock, who he said was here primarily to speak to some of the ongoing litigation issues.

CHAIR STEVENS noted that Mr. Pfeffer had requested to make a public presentation and then to also be allowed to stay in Executive Session to address issues that should remain confidential.

MR. PFEFFER said that, as he spoke with various Legislators and Legislative Council members, he wanted to address the questions that seem to keep arising about what happened and when it happened; that there were questions about the chain of events. He said he wanted to walk through the steps of how we got to where we are today and then would be happy to discuss any proposed fiscal terms in Executive Session. He said he'd like Mr. McClintock to respond to any recent emails members might have received from Alaska Building Inc.'s Jim Gottstein on the litigation.

Mr. Pfeffer said that prior to May 2013, Legislative Council went through just about a dozen attempts to find a new house for legislative offices in Anchorage; a combination of buy/build/lease through Requests For Information (RFIs). By the time it got to April 2013, none of those procurement efforts had resulted in a solution.

The Legislative Council approached him and his partner (Bob Acree) to provide alternatives for how to extend the lease. They asked specifically for three choices: (a) new carpet and paint, lease rate remains the same; (b) new carpet, new paint, repair bathrooms, fix elevators and some mechanical upgrades with a moderate increase in the rate; and (c) a full modernization which is what they had just done with the old Chevron building near the Park Strip on 9th Avenue. Those options were presented in May 2013 and Legislative Council indicated a preference for the modernization option, but said they wanted to go out for an RFI one more time to see if anything else was available. The RFI was published and two responses were received. He said he wasn't present at the Executive Session meeting, but understood the proposals were deemed unacceptable. A new Legislative Council meeting was called for June 7, 2013, and at that meeting, several motions were made. In general, they authorized the Chair to move forward to negotiate a lease on a full modernization basis and how to do that under the Legislature's procurement code, and hiring Alaska Housing Finance Corporation (AHFC) as the Legislature's third party representative to review the proposal. At that point, the Chair had the authority to enter into a contract without coming back to Legislative Council; he indicated that was not his preference and that he wanted to go through a process. Mr. Pfeffer said that they then spent three months, June through August, with Legislative Affairs Agency and legislative staff and AHFC, who had a third party construction cost estimator and a third party appraiser. As we developed the scope that Council was looking for and the finished project, the prices would be estimated and AHFC would review it and decide if it was fair and reasonable in the market place. That was a three month back-and-forth process, at the end of which the Chair chose to come back to Council. On August 23, 2013, and in an Executive Session, we presented the scope, AHFC presented their findings of cost competitiveness, and there were no objections; because it was in Executive Session, there aren't meeting minutes to reflect those presentations. The public portion of the meeting shows that members came out of Executive Session; the Chair indicated there were no objections to moving forward; Representative Johnson made a motion to try to negotiate a purchase price; and the deal was set to go. The only thing remaining at that point was to sign a lease and, in order to move forward on a lease and to do the improvements, we needed to be able to finance the improvements. That meant getting past the scrutiny of banks; we went to several banks in an attempt to finance the project. The banks wanted to see the

T's crossed and the I's dotted before they made that loan. Two key exhibits to the lease were a nine page procurement officer's finding that he said he believed was drafted by Legislative Legal and signed by the Chair as the procurement officer, and a finding of savings under this methodology as compared to providing the same scope in a different place in downtown Anchorage. He said that's kind of a tricky concept because at that time there was no ability to lease more than maybe 10,000 to 15,000 square feet in any single location in downtown Anchorage, so if you wanted space with parking onsite in the quantities we were talking about, it essentially boiled down to new construction so the cost comparison was to try to be 10% or greater below new construction. The AHFC reports concluded that. There was a finding by the Legislative Affairs Executive Director that that test had been met and there was a letter sent to Legislative Budget & Audit saying that they had met that test, which was required by statute. He said that as part of the procurement officer's finding there was a notice to the legislative leadership that the Chair intended to enter into the lease. He said that took about three weeks and the lease was then signed September 19, 2013.

Mr. Pfeffer said that basically we were in a position of okay, perform, or you're in default under the lease. We got to work, we acquired the adjacent property, we let the construction contracts and we got the project done. We were obligated to deliver a completed project by December 31, 2014. As we got close to completion, we were ready to transition from the construction lenders to the long-term lender. The long-term lender was new to the project and wanted to see the T's crossed and the I's dotted. He had the lease with the exhibits, the procurement officer's finding, the letter to LB&A; but as with any commercial real estate transaction, that lender also wanted what's called a Subordination of Non-Disturbance Agreement, which is basically something that is signed right before you do the final closing of the financing and the lender wants the tenant to say everything's in good order, the work is complete, we're satisfied with the results, the scope's been done, all the conditions have been met and we're ready to commence paying rent. He said that agreement came from their lender to Legislative Council and that was signed by the Chair as procurement officer on December 23, 2014. Based on that certification that everything was in good order and good effect, the lender closed on the transaction, paying off the construction loan; and the leased commenced January 1, 2015.

Mr. Pfeffer said that shortly thereafter, fiscal crisis issues started to rise and everybody started second guessing if this was actually the best solution. The option of relocating to the Atwood Building was discussed and that culminated in Legislative Council recommending to the conference committee to fund the full lease which happened last year, so the 2016 annual rent amount was funded. As part of that recommendation from the Council, they also asked the Chair again to negotiate a purchase price. During the summer of last year (2015) and into September and October, we met with Senator Stevens and Serena Carlsen (Stoel Rives LLC) and Doug Gardner (Legal Services Director), and we basically said the purchase price should be \$37,000,000, which was our costs and those costs were validated by the third party before we entered into the contract. If we didn't have those validations and certifications and procurement findings, we wouldn't have entered into the contract, but we did, based on those approved costs. We believed that to be a fair purchase price. He said that in December, an analysis was presented to Legislative Council that showed a wide variety of different ways of looking at comparison of costs. He said that many of the Council members questioned at a meeting on December 4, 2015, and again on December 19, 2015, if there was really a true third party analysis done of that. By the time we got to December 19, 2015, we were six days before the holiday and, at that point, the Council passed the motion that Senator Stevens read earlier that, in essence, said that Council recommended to the full Legislature not funding the lease unless it can be shown to be cost competitive on a usable square foot basis. We then said okay, we think we have a lease that says something but alright, here's a new target. We said we were willing to try to jump in and help and see if we can find savings; we realized things were different than when this deal was cut. He said we started to work to see if we could hit the target set in that motion. We asked that a financial consultant be retained by Legislative Council so that there was an independent analysis and that request was declined, but we submitted our proposal within the 45 days thinking that we believed we hit the target.

Mr. Pfeffer said there was somewhat of an independent analysis by the Department of Revenue who prepared a spreadsheet that said, yes, under these conditions, that is a cost competitive solution. Legislative Council then convened February 11, 2016, and said that an independent analysis was needed because there were so many different opinions. Council retained Navigant Consulting; over a

three week period they completed their analysis. He said they met with him for an hour and a half somewhere near the end of that three weeks. He provided them with his information and then on March 14, they came out with their report. He said we didn't see that report until March 16 and, in essence, it says that if the State were to purchase the building for the \$37 million, the equivalent lease rate for Atwood would be about 4% higher. The report said that if the State were to purchase the building for \$35.6 million, it would be equivalent to the lease for Atwood; and, obviously, if you purchased it for less than \$35.6 million, it would be less than the Atwood. He said we were pleasantly surprised to have it confirmed by the consultant that we were cost competitive. We believed we hit that target from the December 19, 2015, meeting motion. Since then, as Sen. Stevens said, shortly after that report came out, Sen. Stevens made a purchase offer of \$32.5 million, and we agreed to lower the price to get within a number that's lower than needed to be competitive with Atwood, and we proposed \$35.4 million. He said, subsequent to that, just this past Monday, there was a conference call with Sen. Stevens, Rep. Herron, Mr. McClintock, Mr. Pfeffer, Serena Carlsen, and Doug Gardner. After a bit of "what are we gonna do," Rep. Herron asked if we'd be willing to split the difference between those two numbers and we verbally agreed to that. It hasn't been done in writing, with the exception that he said he sent an email this afternoon to confirm that the verbal agreement was for a number just slightly less than \$34 million, which puts it solidly below the cost of Atwood on a usable square foot basis.

Mr. Pfeffer said the Navigant report also, on page 6, highlighted really three other factors that they didn't address from a financial perspective. He said he was just going from memory, but that the report said it doesn't take into account any of the costs or expenses that might be associated with breaking the lease or any of the relationships that breaking the lease might cause in the business community; it doesn't account solidly for potential cost increases in a move to the Atwood Building. He said Council just heard the Commissioner of Administration say they believed that to be the cost, but might be less, might be more. He said the report also laid out that the office building as designed and built was per Council's specifications and hits a lot of the criteria that are important to the legislative branch that may or may not be achievable in the Atwood Building. He said those are intangibles. He believed they beat the cost per square foot number plus we avoid those intangibles. The last thing

he said he wanted to add before Mr. McClintock addresses the litigation issues was that several Council members have said that they heard a rumor that the owners have made a lot of money on this project - maybe we made \$9 million or maybe \$5 million or maybe \$3 million. He said that on several occasions by multiple different parties, Legislators and others, have asked if we would be willing to agree to an audit of the cost and every time we've been asked, we've said yes. If we go into Executive Session and it's important to everybody, we'd almost prefer to insist that there was an audit because we know what our costs were, we know that they were validated up front, we know that they are fair and reasonable. He said we'd ask that Council get an independent auditor to confirm that so it puts that rumor to rest.

Mr. Pfeffer said the point was that the first request of them was in April of 2013 - can we solve a problem, can we give Council solutions - and there have been multiple requests since then and every time we get those requests we try to solve the problem and, so far, we think we have every time. He said if we can help achieve savings, we're willing to do it and we're here to talk about that. Mr. Pfeffer made himself available to answer any questions before Mr. McClintock spoke to the litigation issues.

REPRESENTATIVE KITO said he had a question and perhaps a comment. He said thinking back to the motion in December and, while Mr. Pfeffer recounted many things that happened, one of the things he didn't identify was that the other part of the motion indicated that there was either a per square foot comparable or that the lawsuit resulted in a declaration that the lease was invalid; and he said we do have that second component, that the lease is invalid. He said that, to him, the motion says that the Legislature does not appropriate according to Council's motion in December. He requested clarification on that part of the motion. He then said that Mr. Pfeffer had identified that Legislative Council had received an appropriate possible third party Department of Revenue analysis and he just wanted to find out for the record if Mr. Pfeffer had a relationship or formal role with the Department of Revenue where he is engaged with that Department.

MR. PFEFFER said he was not engaged with the Department of Revenue, but he was the chair of the Alaska Municipal Bond Bank Authority, which is an independent authority. The DOR is a resource for the AMBBA in doing their lending work around the state, but it is an independent relationship. He

said that review happened in December when Mr. Mitchell was requested by a Legislator (he wasn't sure who) to show up on December 19, 2015, and have an opinion. Mr. Mitchell came to the meeting with a spreadsheet that he said made a bunch of assumptions, that he didn't have accurate data and which was a quick exercise for him. Mr. Mitchell presented that data on December 19, 2015. When we were asked to try and hit this target of being cost competitive, we asked that an independent third party be hired to analyze the report; we asked in writing and were told no in writing. We said the only person left standing was the DOR spreadsheet and we, through Representative Herron's office, had asked DOR to update their spreadsheet. DOR asked us for updated information and we provided it.

REPRESENTATIVE KITO asked Chair Stevens if there would be an opportunity to ask questions about the Navigant report. Chair Stevens confirmed that would happen in Executive Session and that Navigant would be on teleconference to answer any questions Council has.

There being no additional questions for Mr. Pfeffer, Chair Stevens asked Mr. McClintock to share his information.

MR. MCCLINTOCK, from the law firm of Ashburn and Mason, said he wanted to respond in part to Representative Kito's last question. He said his firm had filed a Motion of Reconsideration. The court had ordered additional briefing with responses to their motion due April 11, 2016. Not surprisingly, in the way most litigation is, from our perspective, the lawsuit is far from over. We think there were some significant errors that were made in the court's order that went beyond the question that was presented to them. But that's not to be argued here, but that was the procedural status.

Mr. McClintock said the main thing he wanted to address, and just very quickly, was that Council had received a number of emails from Mr. Gottstein offering gratuitous legal advice to the Legislature on how to proceed. He said it goes without saying that he thought the Legislature had excellent legal counsel with Legislative Council staff and they should look to them for guidance. He said that he took a personal affront to a few of Mr. Gottstein's accusations - not just for himself, his firm or Mr. Pfeffer, but also for the staff of the Legislature's counsel and the participants of the process they went through. He said whatever happened, it was all definitely in good faith. The accusations that Mr. Gottstein repeats over and over about

outrageous conduct, or brought in motions to the court when he asked for punitive damages and *qui tam* damages - those motions lost. The issue Mr. Gottstein had raised continuously, efforts to get into the personal financial affairs of Mr. Pfeffer, the court had basically ruled, at least until this order, that those were not relevant. He said they believe Mr. Gottstein made fairly reckless accusations of the status of where things are. He said that lastly, the court had never made a finding of any sort that there was any bad faith that has gone forth in this process on behalf of any of the parties, and that he would let the record stand for itself. He said that he would also note that early in the case, there was no question that Mr. Gottstein acknowledged that his motivation for bringing the case was over money; he wanted money and he wasn't paid money, and he brought the case. He said there was deposition testimony to that effect. Mr. Pfeffer has offered that we will protect the rights that 716 W 4th Avenue LLC has under the contract and in the litigation but our sincere hope is actually that another path be found to bring everything to a resolution.

There being no further testimony offered by Mr. Pfeffer and Mr. McClintock, and no further questions, Chair Stevens requested the motion to move the Council into Executive Session.

5:42:40 PM

VICE CHAIR HERRON moved that Legislative Council go into Executive Session under Uniform Rule 22(B)(1), discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit and 22(B)(3), discussion of a matter that may, by law, be required to be confidential. I ask that the following individuals remain in the room: Pam Varni, Doug Gardner, Katrina Matheny, Linda Hay, Mike Abbott, Mark Pfeffer, Don McClintock, Amy Slinker and any legislative staff working for Council members and that Serena Carlsen, Kevin Cuddy and Nigel Hughes remain on the teleconference line. We also welcome any Legislators that are not on Legislative Council to remain in the room.

CHAIR STEVENS, in response to a request by Representative Kito, said that his plan was to first ask the Municipality of Anchorage to make a presentation; then to allow Mr. Pfeffer and Mr. McClintock to offer information, then they will be asked to leave the room and Council will continue with the Executive Session.



There being no further discussion, Council went into Executive Session.

7:36:17 PM

Council came out of Executive Session.

CHAIR STEVENS said the discussion in Executive Session was quite extensive. Council heard from the Municipality of Anchorage who was interested in working with the Legislature on the Anchorage LIO project; Council spoke with outside attorney Kevin Cuddy with Stoel Rives LLC in Anchorage, about the current litigation; Council spoke with Nigel Hughes from Navigant, and Serena Carlsen, attorney with Stoel Rives in Seattle; and Council had a good discussion about all the issues they are facing. He then called for a motion.

7:36:58 PM

VICE CHAIR HERRON moved that Legislative Council recommend the purchase of 716 W. 4th Avenue building and land in the amount of \$32,500,000, and authorize the Chair to enter into a purchase and sale agreement which is subject to appropriation by the Legislature. Legislative Council will maximize space in the building by consolidating legislative entities.

CHAIR STEVENS said discussions will continue with the Anchorage Municipality and will look at other financing issues as nothing in the motion precludes trying to finding other ways to finance this project.

A roll call vote was taken.

YEAS: Meyer, Coghill, Hoffman, Huggins, MacKinnon,  
Micciche, Chenault, Johnson, Kito, Millett,  
Thompson, Herron, and Stevens

NAYS: Neuman

The motion was approved 13-1.

There being no further business before the committee, the Legislative Council meeting was adjourned at 7:38 p.m.

7:38:30 PM



## Politics

# Report: State saves \$7.5M if lawmakers leave new Anchorage offices

Author: Nathaniel Herz Updated: July 3 Published March 18

**JUNEAU** — The Alaska Legislature would save \$7.5 million by moving to the state-owned Atwood Building in Anchorage instead of buying its existing, remodeled office space in the city, according to a new independent report commissioned by lawmakers.

The financial analysis, by a San Francisco-based employee of consulting firm Navigant, says issuing bonds to buy the existing offices on Fourth Avenue at the landlords' \$37 million asking price would produce a \$31.7 million total cost over a 20-year period.

Moving to the Atwood Building, on Seventh Avenue, would cost \$24.2 million.

Much of that savings, however, stems from the fact that the Legislature says it would need 20 percent less space in the Atwood Building. The cost per square foot at the Atwood Building is only about 4 percent cheaper, at \$2.95 compared to \$3.08 if the existing building is purchased.

The total 20-year cost of the two options would match if the landlords for the current building, Mark Pfeffer and Bob Acree, dropped their asking selling price to \$29.2 million. And the price-per-square-foot would match if the price fell to \$35.6 million, the report said.

The 20-year cost of keeping the Legislature's existing lease, meanwhile, is \$61.8 million, according to the report.

The joint House-Senate committee that approved the current lease, the Legislative Council, commissioned Navigant's analysis after members failed to reach consensus using competing reports from the landlords and legislative support staff.

Lawmakers have been considering whether to relocate for a full year, since just after they moved into the remodeled space.

Under the Legislature's no-bid lease extension, negotiated by retiring Rep. Mike Hawker, R-Anchorage, annual payments for the Anchorage office space jumped last year to \$4 million from \$682,000, and some lawmakers say that's unaffordable as the state grapples with a \$3.8 billion budget deficit.

The House and Senate each passed different budget proposals this month that, between them, offer the flexibility to pay the existing lease costs, or pursue other options.

Sen. Gary Stevens, R-Kodiak, the Legislative Council's chair, called the Navigant report thorough. He said it was "surprising" to see how competitive the different options are.

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FISHER INVESTMENTS\*

"It puts it all on one piece of paper," Stevens said in a phone interview Friday. "We can all look at it, and the public can look at it, and we can figure out what the best route is for us."

Stevens' next step, he said, is to negotiate with the landlords on the building's purchase price. A Legislative Council meeting will likely be scheduled in the next two weeks for lawmakers to make a final decision, he added.

Stevens noted the analysis doesn't account for the cost of litigation if the Legislature decides to end its existing lease and the landlords file a lawsuit. And, he added, a public interest lawsuit by attorney Jim Gottstein that challenges the legality of the lease further complicates the situation.

Oral arguments on Gottstein's motion for a partial summary judgment to void the state's lease are set for Tuesday afternoon.

**About this author****Nathaniel Herz**

Nathaniel Herz covers politics and general assignments.



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**ALASKA STATE LEGISLATURE  
LEGISLATIVE COUNCIL  
FEBRUARY 11, 2016  
5:07 PM  
Approved August 3, 2016**

**MEMBERS PRESENT**

Senator Gary Stevens, Chair  
Representative Bob Herron, Vice Chair  
Senator John Coghill  
Senator Lyman Hoffman  
Senator Charlie Huggins  
Senator Anna MacKinnon  
Senator Kevin Meyer  
Senator Peter Micciche  
Representative Mike Chenault  
Representative Craig Johnson  
Representative Sam Kito  
Representative Charisse Millett  
Representative Mark Neuman  
Representative Steve Thompson, alternate

**MEMBERS ABSENT**

Representative Mike Hawker

**OTHER MEMBERS PRESENT**

Senator Dennis Egan

**AGENDA**

APPROVAL OF AGENDA  
RATIFICATION OF CHARITY EVENTS  
OTHER COMMITTEE BUSINESS

**SPEAKER REGISTER**

Pam Varni, Executive Director, Legislative Affairs Agency

5:07:05 PM

- I. **CHAIR GARY STEVENS** called the Legislative Council meeting to order at 5:07 p.m. in Room 532 (Senate Finance) of the State Capitol. Present at the call were Senators Stevens, Meyer, Coghill, Hoffman, Huggins, MacKinnon, and Micciche; Representatives Herron, Chenault, Johnson, Kito, Millett, Neuman, and Thompson, alternate member. Representative Hawker was absent.

II. **APPROVAL OF AGENDA**

VICE CHAIR HERRON moved that Legislative Council approve the agenda.

The motion was approved without objection.

III. **RATIFICATION OF CHARITABLE EVENTS**

VICE CHAIR HERRON moved that Legislative Council ratify the Chair's sanctioning of the following charitable events per AS 24.60.080 (a) (2) (B):

- "Best of" Skits
- Girl Scouts of Alaska Annual Auction
- Kenai Peninsula Fair Annual Fundraiser
- Kenai River Jr. Classic/Kenai River Classic/Kenai River Women's Classic
- 27th Annual Fahrenkamp-Kelly Classic Charity Putting Tournament
- 2016 Sham Jam
- 16th Annual Thanksgiving in March
- "Juneau's Got Talent"

CHAIR STEVENS said he sanctioned the list of events, all of which had been confirmed as 501(c) (3) organizations.

The motion was approved without objection.

IV. **OTHER COMMITTEE BUSINESS**

- a. **FY 17 Legislature Budget**
- b. **Anchorage LIO Project**

a. **FY 17 Legislature Budget**

VICE CHAIR HERRON moved that Legislative Council per AS 24.20.130 approve the FY 17 Legislative Council Proposed

Budget and transmit it to the House and Senate Finance Committees for their review and action.

CHAIR STEVENS objected for purposes of discussion and asked Pam Varni to speak to the item.

PAM VARNI, Executive Director of the Legislative Affairs Agency, said that before members is the Legislative Council Proposed FY 17 Budget. In the entire Legislature budget, there are 15 separate budget components and four separate appropriations. The Legislative Council has 15 of these components and three appropriations and that's what she will be covering.

Ms. Varni said that the entire Legislature's FY 17 request is a 1.5% reduction from FY 16 Management Plan and 0.5% reduction from FY 17 Governor's Figures, which are preliminary figures. The main difference was in the Legislature's budget from FY 16 to FY 17 request, which was a decrease of over \$1.1 million by backing out the 2.5% cost of living increase and absorbing those costs in the budget. The Legislative Council request is an overall increase of \$378,500 from the FY 17 Governor's Figures. Ms. Varni went component by component to explain.

For the Legislators Salary and Allowances component, which pays for Legislator salaries, per diem and annual allowances, there was no change. There was no increase in FY 16 or FY 17.

The Administrative Services component pays for the operation of the Division of Administrative Services, which is the main support division for the Legislature along with the Division of Legal and Research Services. In FY 16, this component was reduced by 16 positions and an overall 7.5% reduction; in addition, the Information and Teleconference Section was moved to its own component and appropriation. Under Administrative Services, there's an increase of \$35,500 to fully fund the Legislature's dues to legislative organizations. The Legislature cut legislative dues in FY 16, and full funding is being requested in FY 17; if full funding does not occur, dues will be paid with the amounts in the Adjusted Base. The other increase is \$30,500 in order to fully pay interagency services - for central mail services, risk management insurance premiums, and financial services of AKPAY and IRIS, the payroll and accounting systems in the State. The total increase requested is \$66,000.

The Legislature State Facilities Rent component shows an increase of \$312,500. This component pays for space rentals and some operating expenses associated with space rented by the Legislature statewide. There are increases of \$24,900 for CPI rent adjustments in various locations; \$45,000 for Anchorage LIO security; and \$242,600 for lease payments from FY 15 and FY 16 that were not received in prior budget requests; the increases total \$312,500.

Ms. Varni explained that there were no changes from the FY 16 budget request to the FY 17 budget request in the components of Council and Subcommittees, Legal and Research Services, Select Committee on Ethics, Office of Victims' Rights, Office of the Ombudsman, Information and Teleconference, Legislative Operating Budget, Session Expenses and Special Session Contingency.

REPRESENTATIVE KITO asked if the budget request reflected the removal of the lease costs for the Anchorage LIO in FY 17, noting that in December 2015, Legislative Council recommended the removal of that appropriation if certain conditions were not met, which they were not.

CHAIR STEVENS said that there will be an amendment offered at this meeting that would zero out the appropriation; however, members need to understand that Ms. Varni, under the contract, can do nothing more than present the budget with the full appropriation figure.

MS. VARNI added that in the request before Council is \$4,032,000 for the Anchorage LIO lease, which includes \$3.3 million to the landlord, \$652,000 for operating expenses, and \$45,000 for security. Under the contract, the lease clearly states that the Executive Director presents to Legislative Council an annual request for appropriation for the lease. If there is a non-appropriation by the Legislature, that would be taken up by Legislative Council or the Finance Committees.

SENATE PRESIDENT MEYER said that it appeared that the only area that had significant increases was for the various LIOs throughout the state; if that was so, are any of the leases set to expire and could the rental rate be renegotiated or offices perhaps even closed if they weren't being used very much.

MS. VARNI said that there weren't big increases in the CPI; for instance, in Homer, there was a decrease of \$14,200; Cordova went up \$100; Delta Junction went up \$1,400. The



main increase in this request was for increases needed in FY 15 and FY 16 which were not funded. The only reason this component was not over-expanded in those fiscal years was because the Anchorage space expenses during the renovation were not as high as had been budgeted, and were used to cover other leases that were not fully funded. The FY 17 request before Council is to cover all of the contractual lease payments.

SENATE PRESIDENT MEYER followed up to ask if the \$45,000 for Anchorage security was also included.

MS. VARNI confirmed that was correct; although the funding was removed in FY 16, the direction she had received was to include it in the FY 17 budget request. If it is not the desire of Legislative Council for these increases, then they can be removed.

DISCUSSION FOLLOWED regarding some confusion over the actual amount of the increase for AKPAY and IRIS payroll and accounting systems.

SENATOR MICCICHE asked if Ms. Varni's view was that the Finance Committees would work for some reductions in this budget or if she was essentially putting forth a status quo budget.

MS. VARNI said that the Agency always tries to do a maintenance level budget. She noted for members that in FY 14, a total of \$1,700 was lapsed; in FY 15, it was \$40,700; there was not extra money in the budget request. She said she was trying to present to Council what it looks like the real operating expenses and needs will be.

SENATOR MICCICHE followed up to ask that if the \$4,032,000 lease fee is removed from this budget, did Ms. Varni know what the reduction would be at \$69,345,000.

MS. VARNI said that it would be a 7.5% reduction from the entire Legislature's budget.

There was no further discussion.

CHAIR STEVENS requested the amendment.

5:13:07 PM

VICE CHAIR HERRON that Legislative Council, having received and reviewed the Legislative Council FY 17 Proposed Budget prepared by the Executive Director, which includes an

annual appropriation of funds for the Legislature's obligation as Lessee for the 716 W. 4th Avenue, LLC Anchorage LIO Building per Section 43 of the Lease executed on September 19, 2015, direct that the budget be amended to remove the appropriation for the Anchorage LIO Building for FY 17 from the Legislature's budget and once amended as is customary have the Chair transmit the amended Legislative Council budget to the House and Senate Finance Committee's for their review and action.

CHAIR STEVENS said that the reason for this amendment was to bring the budget into compliance with the motion passed by Legislative Council on December 19, 2015, giving 45 days for a competitive cost on a per square foot of usable space basis.

There being no discussion on the amendment, Chair Stevens asked for a roll call vote.

YEAS: Stevens, Herron, Meyer, Coghill, Hoffman, Huggins, MacKinnon, Micciche, Chenault, Johnson, Kito, Millett, Neuman, Thompson

NAYS: None

The motion for the amendment passed 14-0.

There being no discussion on the motion as amended, a roll call vote was taken.

YEAS: Stevens, Herron, Meyer, Coghill, Hoffman, Huggins, MacKinnon, Micciche, Chenault, Johnson, Kito, Millett, Neuman, Thompson

NAYS: None

The amended motion passed 14-0.

#### **b. Anchorage LIO Project**

CHAIR STEVENS reminded members that on December 19, 2015, Legislative Council passed the following motion:

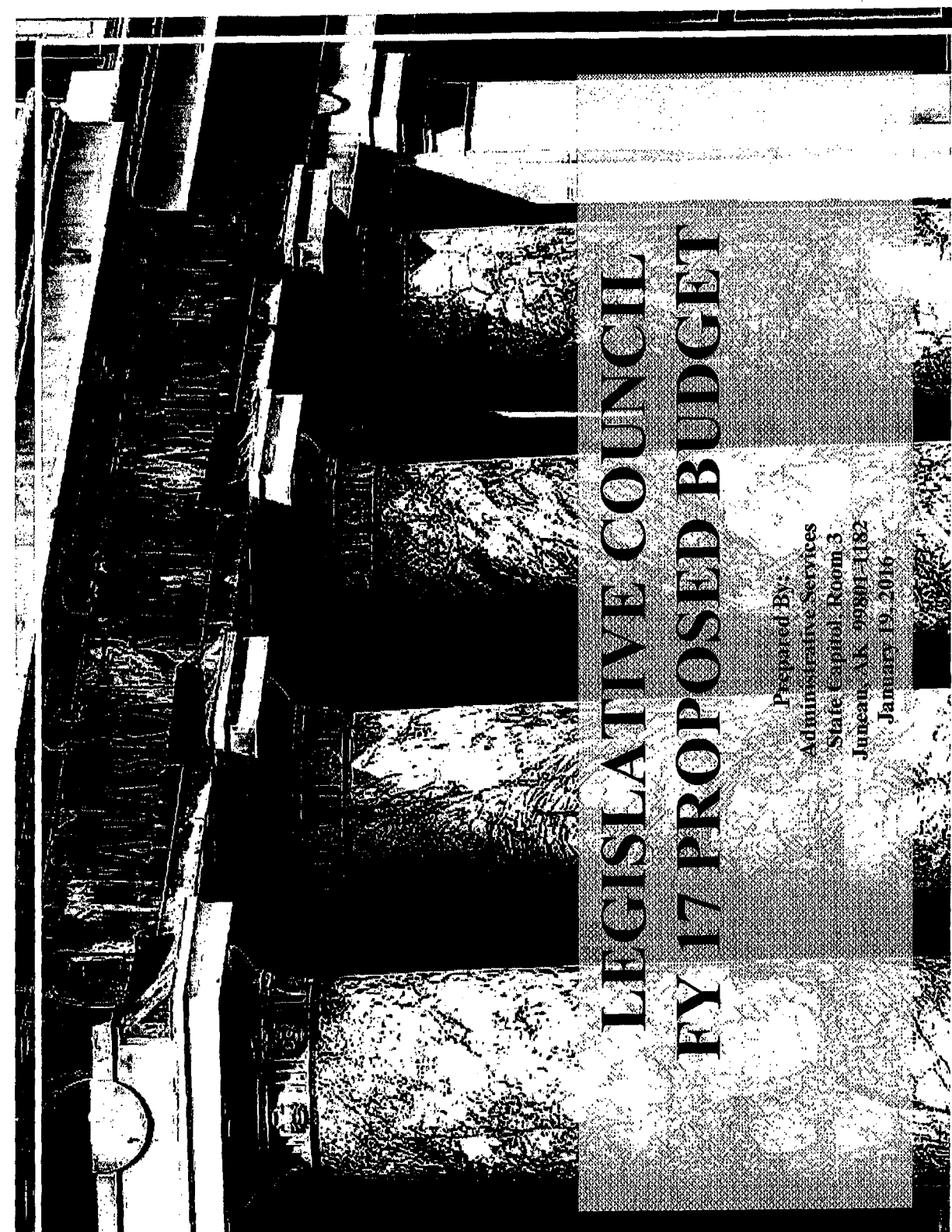
"...that Legislative Council advises the Legislature not to appropriate for the 716 W 4th Avenue lease pending the outcome of the currently pending litigation or unless negotiations between Council and the Legislature and a state entity within the next 45 days results in a

competitive cost on a per square foot of usable space basis."

Chair Stevens said that after reviewing the information submitted by the owner, there did not appear to be a proposal that would result in a competitive cost on a per square foot basis. In addition, there seems to be some confusion and some unanswered questions from the various proposals that have been presented to Council. He said he was therefore going to engage an independent finance expert to look at all the options and make a sound fiscal recommendation to the Council. He said that person would be hired as soon as possible and would get a recommendation to Council in an expedited manner. He realized that time was of the essence due to the tight timeline of the budget process and that a final decision needs to be made before adjournment of the legislative session. Serena Carlsen, Council's attorney from Stoel Rives, made some recommendations on who might be engaged as an independent finance expert and there will be more to come; he said he would share that information with everyone on Council and would make sure that the person chosen would be beyond reproach and have no connection with anybody in the state of Alaska; and certainly no connection with anybody on Council or the owners of the building. Sound financial advice had been requested by just about everybody on Council; up to this point, much of the information has been political and legal advice, and what Council really needs is financial advice.

There being no further business before the committee, the Legislative Council meeting was adjourned at 5:26 p.m.

5:26:08 PM



# LEGISLATIVE COUNCIL FY 17 PROPOSED BUDGET

Prepared By:  
Administrative Services  
State Capitol Room 3  
Juneau, AK 99801-1182  
January 19, 2016

## STATE OF ALASKA

DATE: 1-19-16

## LEGISLATIVE COUNCIL FY 17 OPERATING BUDGET

APPROPRIATION: Legislative Council  
 COMPONENT: Legislature State Facilities Rent

ITEM	FY 15 ACTUALS	FY 16 MGMT. PLAN	FY 17 ADJ. BASE	FY 17 GOV. FIGURE	FY 17 AGENCY REQUEST 1-19-16
*** COMPONENT TOTAL ***	4,964.7	5,531.6	5,531.6	5,531.6	5,844.1
EXPENDITURES					
Personal Services	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0
Services	4,189.5	5,531.6	5,531.6	5,531.6	5,844.1
Commodities	3.7	0.0	0.0	0.0	0.0
Capital Outlay	771.5	0.0	0.0	0.0	0.0
Misc.	0.0	0.0	0.0	0.0	0.0
FUNDING					
1004 General Fund	4,964.7	5,531.6	5,531.6	5,531.6	5,844.1
STAFFING					
Full-time	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0
Staff-months	0.0	0.0	0.0	0.0	0.0

LEGISLATURE STATE FACILITIES RENT: This component pays for space rental and some operating expenses associated with space rented by the Legislature, excluding space rental expenses of the Division of Legislative Audit.

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COMPONENT: LEGISLATURE STATE FACILITIES RENT

ADJUSTED BASE  
CALCULATION

ITEM AND EXPLANATION	AMOUNT	POSITIONS PFT PPT	PERSONAL SERVICES	TRAVEL	SERVICES	COMMODITIES	CAPITAL OUTLAY	OTHER
1. FY 16 Conference Committee Report	5,576.6				5,576.6			
2. Fiscal Notes/Other Appropriation Bills								
3. Vetoes								
4. FY 16 Authorized	5,576.6				5,576.6			
5. Transfers	-45.0				-45.0			
6. FY 16 Management Plan	5,531.6				5,531.6			
7. FY 17 Adjustments								
8. FY 17 Adjusted Base	5,531.6				5,531.6			

ADJUSTED BASE  
CALCULATION

AGENCY Alaska Legislature  
RDU Legislative Council  
COMPONENT Legislature State Facilities Rent

FY 17

Page 60 of 99 pages  
Date: 1-19-16

CODE	SERVICES CLASSIFICATION	PRIOR YEAR FY 15 ACTUALS	FY 17 ADJUSTED BASE			
						FY 17 REQUEST
3000	TOTAL SERVICES	4,964.7	5,531.6			5,844.1
	INTERAGENCY TRANSFERS (NON-ADD)	344.1	441.2			431.3

1002	Federal Receipts					
1003	General Fund Match					
1004	General Fund	4,964.7	5,531.6			5,844.1
1005	GF/Program Receipts					
1006	GF/Mental Health Trust					
1007	I-A Receipts					

#### EXPLANATION

CODE	DESCRIPTION	FY 17 ADJ. BASE	CHANGE	FY 17 REQUEST
3057	Rentals and Leases			
	<b>Anchorage</b>			
	Legislators, Legislative Staff, Ethics Office, and Legislative Information Office	3,987.0	45.0	4,032.0
	Rent - 3,380.0; Operating Expenses - 652.0			
	Office of Victims' Rights - Rent - 55.8	55.8		55.8
	Office of the Ombudsman - Rent - 42.2	42.2		42.2
	<b>Barrow</b> - Legislative Information Office - Rent - 34.0	34.0	6.2	40.2
	<b>Bethel</b> - Legislators and Legislative Information Office - Rent - 80.1; Operating Expenses 15.4	64.5	31.0	95.5

### SERVICES

AGENCY Alaska Legislature

RDU Legislative Council

COMPONENT Legislature State Facilities Rent

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Date: 1-19-16

**FY 17**

CODE		FY16 ADJ. BASE	CHANGE	FY16 REQUEST
3057	<b>Cordova</b> - Legislative Information Office - Rent - 25.7; Operating Expenses 1.6	27.2	.1	27.3
	<b>Delta Junction</b> - Legislators and Legislative Information Office - Rent - 21.9	20.5	1.4	21.9
	<b>Dillingham</b> - Legislative Information Office - Rent - 28.8	24.9	3.9	28.8
	<b>Eagle River</b> - Legislators and Legislative Information Office - Rent - 76.5; Operating Expenses 14.8	90.8	.4	91.2
	<b>Fairbanks</b> - Legislators and Legislative Information Office - Rent - 302.3	298.0	4.3	302.3
	<b>Glennallen</b> - Legislative Information Office - Rent - 14.9	14.9		14.9
	<b>Homer</b> - Legislative Information Office - Rent - 60.2	74.4	-14.2	60.2
	<b>Juneau</b>			
	Juneau Storage, Parking, Other - 57.2	57.2		57.2
	Ombudsman Parking - 1.5	1.5		1.5
	<b>Ketchikan</b>			
	Legislators and Legislative Information Office - Rent 47.8; Operating Expenses - 1.8	49.4	.2	49.6
	Legislators Office - Rent - 6.7	6.7		6.7
	<b>Kodiak</b> - Legislators and Legislative Information Office - Rent - 75.0; Operating Expenses - 9.3	84.3		84.3
	<b>Kotzebue</b> - Legislative Information Office - Rent - 30.9	30.8	.1	30.9

## SERVICES

AGENCY Alaska Legislature

RDU Legislative Council

COMPONENT Legislature State Facilities Rent

**FY 17**

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Date: 1-19-16



CODE	DESCRIPTION	FY17 ADJ. BASE	CHANGE	FY17 REQUEST
3057	North Pole - Legislators Offices - Rent - 26.4; Operating Expense - 10.8	37.1	.1	37.2
	Petersburg - Legislative Information Office - Rent - 12.4	12.4		12.4
	Seward - Legislative Information Office - Rent - 11.5	11.5		11.5
	Sitka - Legislators and Legislative Information Office - Rent - 35.9; Utilities - 2.0	37.9		37.9
	Tok - Legislative Information Office - Rent - 14.4; Operating Expenses - 2.2	15.3	1.3	16.6
	Unalaska - Legislative Information Office - Rent 19.2; Utilities - 4.0	23.2		23.2
	Wasilla - Mat Su Legislative Information Office - Rent - 187.5	187.5		187.5
	Wrangell			
	Legislative Information Office - Rent - 8.2	8.2		8.2
	Legislators Offices - Rent - 8.9	8.9		8.9
	Facilities Contingency	26.9		26.9

## SERVICES

AGENCY Alaska Legislature

RDU Legislative Council

COMPONENT Legislature State Facilities Rent

**FY 17**

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Date: 1-19-16

CODE	DESCRIPTION	FY17 ADJ. BASE	CHANGE	FY17 REQUEST
3087	<b>InterAgency</b> <b>InterAgency Leases</b> Department of Administration  <b>Juneau</b> Community Building Facilities Rent - Legislative Print Shop - 68.5 Court Plaza Building - Office of the Ombudsman - 43.5 State Office Building - Division of Legislative Audit - 140.4 Juneau Warehouse - 50.0 <b>Nome</b> Legislators and Legislative Information Office - 40.2    Total Dept. of Administration--342.6  <b>Kenai</b> Legislators and Legislative Information Office - 68.7    Total DOT/PF--68.7	68.5 43.5 140.4 50.0 40.2 78.6	-9.9	68.5 43.5 140.4 50.0 40.2 68.7
3103	<b>State Equipment Fleet Charges</b> State Equipment Fleet Charges--20.0    Total DOT/PF--20.0  Unallocated Reduction  <b>Note:</b> Subtotal change from FY16 Request to FY17 Request FY15 Space Rent increase requested but not approved in FY15 Budget FY16 Space Rent increase requested but not approved in FY16 Budget  Total Increase needed from FY16 Authorized to FY17 Request	20.0 -242.6	69.9 142.2 100.4 312.5	20.0

## SERVICES

AGENCY Alaska Legislature

RDU Legislative Council

COMPONENT Legislature State Facilities Rent

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Date: 1-19-16

**FY 17**

**2016 Legislature - Operating Budget  
Allocation Totals - Governor Structure**

**Numbers and Language**

**Agency: Alaska Legislature**

**Appropriation: Legislative Council  
Allocation: Legislature State Facilities Rent**

	[1] <u>15Actual</u>	[2] <u>16 CC</u>	[3] <u>16 Auth</u>	[4] <u>16MgtPln</u>	[5] <u>17LegReg</u>
<b>Total</b>	<b>4,964.7</b>	<b>5,576.6</b>	<b>5,576.6</b>	<b>5,531.6</b>	<b>5,844.1</b>
<u><b>Objects of Expenditure</b></u>					
Personal Services	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0
Services	4,189.5	5,576.6	5,576.6	5,531.6	5,844.1
Commodities	3.7	0.0	0.0	0.0	0.0
Capital Outlay	771.5	0.0	0.0	0.0	0.0
Grants, Benefits	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0
<u><b>Funding Sources</b></u>					
1004 Gen Fund (UGF)	4,964.7	5,576.6	5,576.6	5,531.6	5,844.1
<u><b>Positions</b></u>					
Perm Full Time	0	0	0	0	0
Perm Part Time	0	0	0	0	0
Temporary	0	0	0	0	0
<u><b>Funding Summary</b></u>					
Unrestricted General (UGF)	4,964.7	5,576.6	5,576.6	5,531.6	5,844.1

2016-01-19 13:13:53

*Legislative Finance Division*

Page: 28

**2016 Legislature - Operating Budget  
Transaction Change Detail - Governor Structure**

**Numbers and Language**

**Agency: Alaska Legislature**

**Appropriation: Legislative Council  
Allocation: Legislature State Facilities Rent**

Transaction Title	Trans Type	Total Expenditure	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants	Misc	PFT	PPT	TMP
FY16 Conference Committee	ConfCom											
1004 Gen Fund (UGF) 5,576.6		5,576.6	0.0	0.0	5,576.6	0.0	0.0	0.0	0.0	0	0	0
<b>FY16 Conference Committee Total</b>		5,576.6	0.0	0.0	5,576.6	0.0	0.0	0.0	0.0	0	0	0
*** Changes from FY16 Conference Committee to FY16 Authorized ***												
<b>FY16 Authorized Total</b>		5,576.6	0.0	0.0	5,576.6	0.0	0.0	0.0	0.0	0	0	0
Transfer to Administrative Services	TrOut											
1004 Gen Fund (UGF) -45.0		-45.0	0.0	0.0	-45.0	0.0	0.0	0.0	0.0	0	0	0
<b>FY16 Management Plan Total</b>		5,531.6	0.0	0.0	5,531.6	0.0	0.0	0.0	0.0	0	0	0
*** Changes from FY16 Management Plan to FY17 Legislature's Request ***												
Increase to Fully Fund Statewide Legislative Leases	Inc											
1004 Gen Fund (UGF) 312.5		312.5	0.0	0.0	312.5	0.0	0.0	0.0	0.0	0	0	0
<b>FY17 Legislature's Request Total</b>		5,844.1	0.0	0.0	5,844.1	0.0	0.0	0.0	0.0	0	0	0

# ALASKA HOUSE OF REPRESENTATIVES

**Rep. Mark Neuman, Chair**  
Alaska State Capitol, Room 505  
Juneau, AK 99801-1182  
Phone: (907) 465-2679  
Toll Free (800) 505-2678



**Members**  
Rep. Steve Thompson  
Rep. Mike Chenault  
Rep. Craig Johnson  
Rep. Charisse Millet  
Rep. Chris Tuck  
Rep. Max Gruenberg

## LEGISLATURE FY2017 HOUSE FINANCE BUDGET SUBCOMMITTEE NARRATIVE REPORT February 26, 2016

### RECOMMENDATIONS:

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The House Finance Budget Subcommittee for the Legislature submits a recommended operating budget for FY2017 to the House Finance Committee as follows:

**Fund Source:** (dollars are in thousands)

Unrestricted General Funds (UGF)	\$64,306.3
Designated General Funds (DGF)	63.4
Other Funds	809.8
Federal Funds	
<b>Total</b>	<b>\$65,179.5</b>

The Unrestricted General Fund difference from FY16 Management Plan to the House Subcommittee budget recommendation is a reduction of \$9,091.6, a 12.4% reduction from FY16 Management Plan.

These reductions are in addition to the \$3.5 million UGF budget reductions that were taken last year. Attached are two documents from the Legislative Affairs Agency that highlight budget reductions taken in FY16 and cost-saving efficiency items.

From FY15 Management Plan to this Subcommittee recommendation for FY17, the Legislature's UGF has been reduced by \$12,597.9 or 16.4%.

### Positions:

Permanent Full-time	251
Permanent Part-time	295

Temporary  
Total

-0-  
545

### **BUDGET ACTION:**

---

The House Finance Budget Subcommittee for the Legislature reviewed the FY2017 budget request and the following are highlights of the recommended actions:

- **Agency-wide**
  - The Legislature will implement 5-day furloughs for all full-time employees that will save \$727.6 UGF
- **Budget & Audit RDU**
  - Legislative Audit
    - Eliminated a net of \$937.2 UGF for the HB 30 Performance Reviews as the program hasn't delivered the anticipated results
    - Reduced the budget by an additional \$500.0 UGF
  - Legislative Finance
    - Reduced the House Finance Committee's budget by \$300.0
  - Committee Expenses
    - Reduced the budget by \$400.0 UGF
- **Legislative Council RDU**
  - Salaries and Allowances
    - Reduced the House office allowance accounts by 25% from \$16.0 to \$12.0 for a savings of \$160.0 UGF
  - Administrative Services
    - Denied increases for dues \$35.5 UGF
    - Denied risk management and accounting system costs \$30.5 UGF
    - Eliminated dues for Energy Council \$29.5 and reduced PNWER dues by 50% to \$23.0 UGF
    - Changed a position from full-time to part-time for savings of \$49.8 UGF
  - Council and Subcommittees
    - Eliminated the last year of funding for the Task Force on Unmanned Aircraft Systems for savings of \$8.9 UGF
    - Deleted funding for the Administrative Regulation Review Committee \$52.3 UGF
  - State Facilities Rent
    - Denied the request of \$312.5 UGF for lease costs as Legislative Council can absorb these costs

- Accepted the Legislative Council's recommendation regarding the Anchorage LIO to remove \$4,032.0 UGF
- **Legislative Operating Budget RDU**
  - Legislative Operating Budget
    - Reduced the House's operating budget by \$400.0 UGF
  - Session Expenses
    - Reduced the budget by \$200.0 UGF

#### **ATTACHED REPORTS:**

---

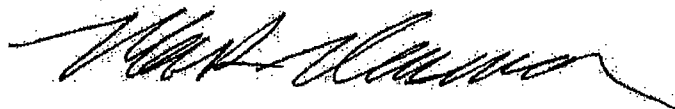
The House Finance Budget Subcommittee for the Legislature adopts the attached reports:

#### **2016 Legislative Finance Division Reports – House Structure**

1. Multi-year Agency Totals – Operating Budget
2. Multi-year Allocation Summary (All Funds)
3. Multi-year Allocation Summary (GF Only)
4. Transaction Compare between FY17 Adjusted Base (17Adj Base) and House Subcommittee (House Sub)
5. Transaction Compare between FY17 Governor Amended (17GovAmd) and House Subcommittee (House Sub)
6. Wordage Report

The Budget Action Worksheet is attached for informational purposes.

Respectfully submitted,



Representative Mark Neuman, Chair  
House Finance Budget Subcommittee for the Legislature

## LEGISLATIVE AFFAIRS AGENCY'S FY 16 BUDGET REDUCTIONS

### ADMINISTRATIVE SERVICES

• Supply Assistant/Capitol Tour Coordinator	full time position deleted	-56.9
• Capitol Tour Guides	9 temporary positions deleted	-71.6
• Print Shop Machine Operator	PPT position deleted	-56.5
• Maintenance Worker	PPT position deleted	-55.6
• Custodian	PPT position deleted	-27.6
• Custodian	PPT position deleted	-27.0
• Help Desk	temporary position deleted	-28.8
• Micro Computer/Network Specialist	full time position deleted	-120.2
• Travel	reduce travel	-50.0
FY 16 request	160.0	
FY 16 Mgmt Plan	<u>-96.4</u>	
	63.6	
• Services – reduce dues		-31.9
CSG 82.0 (-7.2)	NCSL 107.0 (-8.9)	
PNWR 46.0 (-4.0)	Pacific Fisheries 6.9 (-.6)	
Energy Council 29.5 (-8.9)	Western States Forestry 5.0 (-.5)	
• Commodities		-87.9
FY 15	630.0	630.0
FY 15 Actuals	941.8	<u>-482.1</u>
FY 16 Request	630.0	147.9
FY 16 Mgmt Plan	482.1	<u>- 60.0</u> LIO
		87.9 total commodities
• Equipment		-82.0
FY 15	100.0	
FY 15 Actuals	179.5	
FY 16 Request	100.0	
FY 16 Mgmt Plan	18.0	
• Anchorage Security Contract		-45.0
This was not budgeted in Administrative Services. It was budgeted in		
Legislature State Facilities Rent component. The decrease happened there		-741.0
and Administrative Services was transferred back the 45.0.		<u>+45.0</u>
		-696.0

Specific reductions by Senate Finance Committee	-471.6
Additional cuts	<u>-269.4</u>
	-741.0
	<u>+ 45.0</u>
	696.0



### LEGAL SERVICES

• Library Assistant temporary position for deleted	-29.3
• Legal Secretary 11.5 month position deleted	-90.9
• Attorney V full time position deleted	-182.6
• Commodities reduced	<u>-17.2</u>
	-320.0

### RESEARCH SERVICES

• Research Analyst PPT position deleted	-131.3
• Research Analyst PPT position deleted	-103.4
• Research Assistant PPT position deleted	-87.0
• Research Assistant temporary position deleted	<u>-22.3</u>
	-344.0

### INFORMATION & TELECONFERENCE

Fairbanks Information Assistant	reduced from full time to PPT	-41.7
Mat Su Information Assistant	reduced from full time to PPT	-43.2
Barrow Information Officer	reduced from full time to PPT	-93.0
Kotzebue Information Officer	reduced from full time to PPT	-104.3
Juneau Information Assistants	reduce 8 positions from 5 mos. To 4 mos.	-51.8
Hourly casual labor pool at LIO's	reduced	<u>-24.7</u>
		-358.7

-741.0

-320.0

-344.0

-358.7

-1,763.7

23 positions

## **Legislative Affairs Agency Efficiencies:**

### **Supply**

- Only pouching once a week during interim unless it is an emergency.
  - It is \$15 for a 1 oz parcel, \$41 for a 6 oz – 2 day service.
  - Overnight is \$23 for a 1 oz parcel.
- Mailing whenever possible, and fitting parcels into the smallest envelope possible. The mailroom has been assisting in that endeavor.
- Developed an inventory warehouse binder which catalogs all items available at the surplus warehouse. This saves staff time and allows us to better utilize the items in the warehouse. We will check the binder before purchasing new items to make sure we don't already have it.

### **Agency-Wide**

- Agency staff travel has been greatly reduced.
  - Trips have been consolidated whenever possible.
  - Less people have been sent for session move.
  - Travelers are sharing costs of rental cars, taxis and hotel rooms if possible.
  - Outsourcing utilized if possible and cheaper than sending an employee. (ex. session move).
  - Not sending a recorder to attend Leg Council Meetings when they are only scheduled to be in executive session.
- Lowering the monthly allowance amounts on Electronic Device Allowances.
- Not printing as many copies of year-end reports and documents, having them available electronically instead.
- Reusing supplies (binders, paper, etc.) whenever possible.
- Encouraging employees to sign up for electronic deposit for both Accounting and Payroll. This saves on the cost of printing checks and the time it takes for LAA staff to stuff and address envelopes and the postage required to mail the checks.
- Hours for hourly employees have been reduced in all sections.
- Switching to plain white paper cups, instead of the ones printed with the flag song, which was a cost-savings.
- Phones bills are no longer emailed out to offices each month. This wasn't an efficient use of staff time.

### **Information & Teleconference**

- Developed in-house digital witness system for committee meetings and hearings this is efficient and necessary to help with people testifying in the meetings.
  - Developing in-house saved hundreds of thousands of dollars in programmer costs.
- Positions have been left unfilled.
- Getting committee approval before sending Media Services for meetings that need to be streamed. This ensures staff is necessary and that it comes from the appropriate budget.
- Utilizing Media Services Staff to fill in Moderator vacancies when necessary.

- LIO Information Officers and assistants don't turn in timesheets when they fill in at the office during Interim which saves money.
- LIO staff assist constituents in filling out PFD applications. In Kodiak alone, over 250 applications were filled out. This is a statewide efficiency, in that DOR staff don't need to assist these applicants.
- Specialized services have been reduced.
- Didn't hold annual Admin Meeting for all LIO's to save money.

#### **Info Services**

- Turning off iPad data plans that are unnecessary and asking staff to utilize Wi-Fi if possible.
- Didn't order printers or monitors during last hardware refresh to save money.
- Fewer hours for Help Desk and Tech Services 8:00-5:00 Instead of 8:00 – 6:00.
- Consolidating shipping and picking up from airport rather than having delivered.



# **LAWS OF ALASKA**

**2016**

**FOURTH SPECIAL SESSION**

**Source**  
**CCS HB 256**

**Chapter No.**  
**3**

## **AN ACT**

Making appropriations for the operating and loan program expenses of state government and for certain programs; capitalizing funds; amending appropriations; repealing appropriations; making supplemental appropriations and reappropriations; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund; and providing for an effective date.

---

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

**THE ACT FOLLOWS ON PAGE 1**

**Enrolled HB 256**

**Exhibit S | Page 1 of 3**

		Appropriation	General	Other
		Allocations	Items	Funds
3	<b>Judicial Council</b>		<b>1,225,300</b>	<b>1,225,300</b>
4	Judicial Council	1,225,300		
5		*****	*****	
6		***** Alaska Legislature *****		
7		*****	*****	
8	It is the intent of the legislature that all full-time non-partisan and partisan legislative			
9	employees take five days of furlough during the fiscal year ending June 30, 2017.			
10	<b>Budget and Audit Committee</b>		<b>14,867,600</b>	<b>14,117,600</b>
11	Legislative Audit	5,269,100		
12	Legislative Finance	7,552,400		
13	Committee Expenses	2,046,100		
14	<b>Legislative Council</b>		<b>25,333,800</b>	<b>25,288,800</b>
15	Salaries and Allowances	7,459,800		
16	Administrative Services	8,880,700		
17	Council and Subcommittees	953,100		
18	Legal and Research Services	4,089,800		
19	Select Committee on Ethics	248,900		
20	Office of Victims Rights	952,200		
21	Ombudsman	1,249,700		
22	Legislature State	1,499,600		
23	Facilities Rent - Other			
24	than Anchorage 716 W. 4th			
25	Ave.			
26	<b>Information and Teleconference</b>		<b>3,106,100</b>	<b>3,101,100</b>
27	Information and	3,106,100		
28	Teleconference			
29	<b>Legislative Operating Budget</b>		<b>21,396,800</b>	<b>21,387,000</b>
30	Legislative Operating	11,415,100		
31	Budget			
32	Session Expenses	8,915,700		
33	Special Session/Contingency	1,066,000		

1		<b>Appropriation</b>	<b>General</b>	<b>Other</b>
2		<b>Allocations</b>	<b>Funds</b>	<b>Funds</b>
3	<b>Legislature State Facilities Rent</b>	<b>844,900</b>	<b>844,900</b>	
4	<b>Anchorage 716 W 4th</b>			
5	Legislature State	844,900		
6	Facilities Rent - Anchorage			
7	716 W. 4th Ave.			
8	(SECTION 2 OF THIS ACT BEGINS ON THE NEXT PAGE)			

# *Alaska State Legislature*

## *Legislative Affairs Agency*

*Office of the Executive Director*

*Terry Miller Legislative Office Building, Room 217*

*Mailing Address: State Capitol, Rm. 3 Juneau, Alaska 99801-1182 Phone (907) 465-3800 Fax (907) 465-3234*

---



July 18, 2016

**VIA U.S. MAIL AND HAND-DELIVERY**

Mark Pfeffer

716 West Fourth Avenue, LLC

425 G Street, Suite 210

Anchorage, AK 99501

Robert Acree

716 West Fourth Avenue, LLC

P.O. Box 241826

Anchorage, AK 99524

Dear Mr. Pfeffer and Mr. Acree:

I am writing to you in connection with the "Extension of Lease and Lease Amendment No. 3", dated September 19, 2013 (the "Lease").

While I included a budget request to cover the annual obligations of the Legislative Affairs Agency ("LAA") under the Lease in the FY 17 proposed budget as presented to the Legislative Council for this fiscal year, that amount was reduced by the Legislature. The funds appropriated by the Legislature are not sufficient, in my judgment, to cover the annual Lease payments and expenses. Accordingly, LAA is exercising its right to terminate the Lease pursuant to Sections 1.2 and 43 of the Lease.

We would like to work with 716 to arrange for an orderly transition later this year. LAA currently plans to vacate the building on or about October 16, 2016. We remain available to discuss any questions or concerns you may have.

Sincerely,

A handwritten signature in cursive script that reads "Pam Varni".

Pam Varni  
Executive Director

cc: Donald W. McClintock  
Robert Hume  
Doug Gardner

4942 465T 1000 060T E102

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PS Form 3800, August 2006 See Reverse for Instructions



## Politics

# Walker says he'd veto Anchorage legislative office purchase

 Author: Nathaniel Herz  Updated: July 3  Published May 17

JUNEAU — Gov. Bill Walker said Thursday that he will veto a purchase of the Legislature's office building in Anchorage if lawmakers propose it, a threat that one Senate leader suggested could draw retaliation.

Walker said paying \$32.5 million for the newly renovated Anchorage Legislative Information Office, or LIO, on Fourth Avenue would be inconsistent with the steep cuts being proposed by his administration and by lawmakers in the face of the state's \$4 billion budget deficit.

"I'm done with the LIO," Walker said in an interview. He added: "It's casting no disrespect on those that were involved in the process, but there's something really wrong with that transaction."

Walker's position was first reported by the Associated Press.

Veto threats from Walker have been relatively rare, and a longstanding tradition holds that the governor and the Legislature make no changes to the other branch's proposed budgets.

Walker said his veto warning came as a simple response to a reporter's question. He insisted: "I'm not trying to blow up the session."

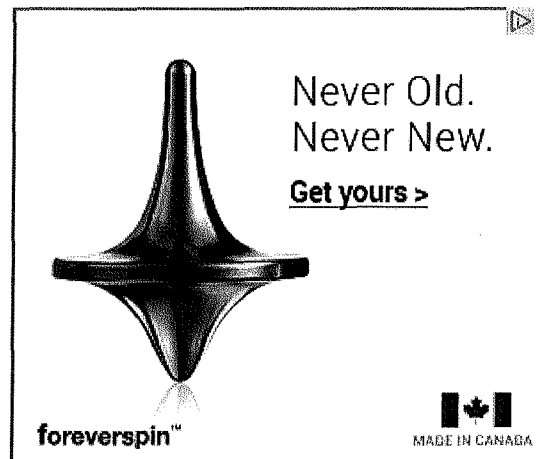
But the announcement Thursday quickly reverberated through the Capitol, and Sen. Anna MacKinnon, R-Eagle River and co-chair of the Senate Finance Committee, said lawmakers might respond in kind.

"He's getting into legislative business," said MacKinnon, who put the \$32.5 million purchase in the Senate's proposed capital budget after it was approved last month by a committee of legislative leaders. "If he wants the Legislature in his business, let's go for it."

The Anchorage office dilemma has bedeviled lawmakers for a full year.

The Legislature moved in January 2015 after a renovation that installed glass walls, glass elevators and trash cans with motion-sensing lids. Annual payments for the space rose to \$4 million from \$682,000.

The renovation, by developers Mark Pfeffer and Bob Acree, was part of a no-bid lease extension negotiated by Rep. Mike Hawker, R-Anchorage, and lawmakers last year began exploring a move, with some saying the building was too expensive given the budget deficit.



Then, a judge last month ruled the lease was illegal and invalid, saying that the extensive renovations made the deal more than a simple extension and should have been subject to competitive bidding rules.

Lawmakers were considering a move to the state-owned Atwood Building, an eight-minute walk away. But instead, the Legislative Council, a committee packed with GOP leaders, voted to buy the Fourth Avenue building — justifying their decision, in part, with an independent analysis that said lawmakers' per-square-foot rate would be lower than in the Atwood Building.

Walker said Thursday that he was familiar with the analysis but was skeptical of the state purchasing a new property.

"There are so many other options available other than spending \$32.5 million on that building," he said.

Walker added that Anchorage lawmakers could also use office space in their own districts if they choose not to move into the Atwood Building. And he downplayed the risk of a lawsuit by the developers, noting that the Legislature has an "appropriation clause" that makes the lease — already struck down by a lower-court judge — subject to the state setting aside money to pay for it.

A spokeswoman for the developers, Amy Slinker, responded to Walker's announcement Thursday with an emailed statement.

"The Legislative Council proposed a solution. We have agreed to it," the statement quoted Slinker as saying. "We stand ready to work with the parties to accomplish the council's directive."

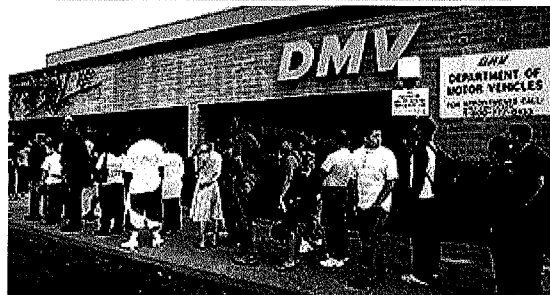
MacKinnon said legislative leaders proposed the purchase because it was cost effective.

"I think the governor has acted in a way that is inconsistent with the best financial choices for the Legislature," she said.

Democrats disagreed. Rep. Scott Kawasaki, D-Fairbanks, said Walker's veto threat was a "great move."

The Fourth Avenue building, he added, is the "single greatest example of legislative largess." And the Legislature's Republican leaders have done Walker no favors, either, Kawasaki said.

### Drivers Feel Stupid For Not Knowing This New Rule



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you better read this... [improveinsurance.com](http://improveinsurance.com)

"This Legislature has hammered his bills, refused to support his appointments on political grounds," Kawasaki said.

Now, after months of meetings to resolve the situation with the Anchorage office space, lawmakers will have to come up with a different plan.

"I really can't tell you what we're going to do at this point," Sen. Gary Stevens, R-Kodiak and chair of the Legislative Council, said in an interview late Thursday. "All I can say is it's just one damn thing after another. This goes on and on, doesn't it?"

#### About this author

**Nathaniel Herz**

Nathaniel Herz covers politics and general assignments.



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